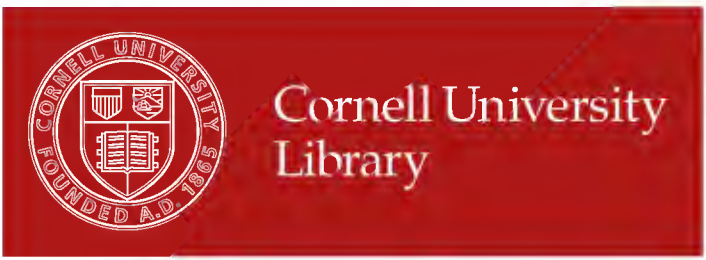

THE SCIENCE OF ETHICS

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THE
SCIENCE OF ETHICS

CHAPTER I

ON NATURAL RELIGION

DEFINITION

By *religion* * is meant the worship of God, the supreme origin, cause, and ruler of the world. *Natural* religion is the worship of God as determined by reason alone: or, more fully, it is that body of religious truths and the duties resulting from them which our reason makes known to us without revelation.

* The derivation of the word is uncertain. Some derive it from *relegere*, a reiterated reading of or thinking upon the things of God; some from *re-eligere* or the constant choice of God; others from *re-ligare*, i.e., a continued binding of the soul to, or union with God. Mr. Westermarck derives the word from *re-ligare*, but considers that it arose out of the practice common to certain savage races of binding sacred things in cloths or rags.

Our definition given in the text, which is evidently based upon the essentials of religion in its highest form—monotheism, at once suggests the difficulty that many of the lower forms of religion were true at least in part, and therefore that they ought to find a place in our definition of religion. It will be found, however, that the essentials of these primitive forms are preserved in our definition of religion, a proof of which is that our definition, as will presently be seen, is in almost all respects the same definition that is adopted by those who attempt to define religion by abstracting from the various primitive religions their common content (*see* p. 10). In any case, in defining religion according to its highest form, which is monotheism, we are only following the analogy of the various sciences which in defining their terms make use only of the developed conceptions of science, ignoring all discarded ideas and beliefs as either inadequate or untrue. The primitive religions have disappeared. They have been finally repudiated by civilised men. Polytheism is not the accepted doctrine of any developed people to-day. In this fact alone, apart altogether from what is revealed by a critical examination of these primitive religions taken in themselves, we find ample evidence of their untruth

Our duties towards God are of two kinds, those depending on charity and those depending on justice. By charity we are bound to the love of God our final *end.* Justice prescribes the rendering to God of all the worship due to God as the first *cause,* as creator and sovereign ruler of the world, from whom we have received our being, and on whom we are totally dependent in every need of existence and of life. By charity we are bound to God as *one* with us, all love being based on the unity of the thing loved with the lover.* As a part of justice religion defines our duties to God as *distinct* from us, and God's rights *as against* us. As a part of charity religion binds the soul to God, its highest good, as a virtue of justice religion consists in the payment to God of what we owe Him, and thus getting out of His debt.

Now in a wide sense † religion may be regarded as comprising all of our duties to God, those of charity and those of justice. But in its stricter sense it is confined to the worship of God as defined by justice alone. It is as a part of justice that we shall consider natural religion in the present chapter: at the end of our discussion,

or their inadequacy, and, therefore, we are justified in defining religion according to the form which it attains in its highest development. "He," says Eucken ("The Truth of Religion," p. 1) "who wishes to ascertain the intrinsic truth of religion need neither trace its blurred beginnings in time nor pursue its slow ascent, but may take his stand upon the summit of its development." It is, however, our intention in the present chapter, and so far as the purpose of this work permits, to give ample consideration to these primitive religions.

* See Vol. I. p. 320.

† It is in this broad sense that St. Thomas uses the word in S. Theol., II. II. Q. LXXI. art 1, where he speaks of religious worship as due to God, "cui principaliter alligari debemus tamquam indeficienti principio: ad quem etiam nostra electio assidue dirigi debet, sicut in ultimum finem." He defines religion in its more precise sense as a part of justice in the third article of the same question where he writes: "ad religionem pertinet exhibere reverentiam uni Deo secundum unam rationem; in quantum scilicet est primum principium creationis et gubernationis rerum"; and again in the first article of the same question—"dominium convenit Deo secundum propriam et singularem quandam rationem; quia scilicet ipse omnia fecit; et quia summum in omnibus rebus obtinet principatum; et ideo specialis ratio servitutis ei debetur, et talis servitus nomine latriae designatur."

however, will be added a brief consideration of man's duty to God as grounded on charity.*

THE NATURE OF RELIGION

The definition which we have just given will enable us to distinguish three elements that go to make up the complete notion of religion, viz. the object, the motive, and the act of religion.

The *object* of religion is God. All religious honour is paid to Him, and finally rests in Him. Now there are some creatures who stand in very close and intimate relationship with God, who are His special friends, to whom it is given in an especial way to reflect His glory, who also by Divine appointment occupy an intermediate position between God and man, sometimes acting as intercessors for man, and sometimes as God's special representatives and emissaries. To these also religious honour is given of a secondary kind and in a secondary and dependent way only. They are honoured, not for themselves, but merely as God's friends and representatives. The first and final object of all religious honour is God.

The *motive* of religious worship is man's indebtedness to, and dependence on, the Supreme Being. Our indebtedness to, and dependence on God are of the most complete and absolute kind. First, He is our creator, our first cause, the ultimate principle of our being. From Him we have received all that we are and have. Moreover, as our creator He is also the sustainer of our existence. Without His helping hand we should dissolve into the nothingness out of which we came. In Him, therefore, we live and move and have our being. Secondly, God is the supreme ruler of the universe.

* A difference between religion as a part of justice and religion as a part of charity that follows from the fundamental difference given in the text is that religion as a part of justice relates to the *things to be done* in order to satisfy our indebtedness to God; charity relates to God Himself immediately and directly.

From Him proceed all the laws, physical and moral, by which the world (and man in particular) is directed to its end. He, therefore, is supreme lord and master, and in Him is the fullness of power and authority in regard to all creatures. We are, therefore, in a position of absolute dependence on God, dependent on His goodness for what we are and have, and dependent upon His authority as supreme ruler of the universe. The virtue of religion, as a part of justice, consists in the acknowledgment of this condition of dependence and in paying off our debt to the Divine goodness, in so far as in us lies, by acts of religion.

The *act* of religion is worship. As we have seen, our indebtedness to God is of a very special kind, and worship is the act whereby we acknowledge this special indebtedness. Just as there are special acts whereby a child acknowledges its own position of subjection and the father's position of authority, and other acts whereby the supremacy of a monarch is acknowledged, so also there must be special acknowledgment of our indebtedness to, and dependence on, God; and the act whereby we acknowledge this special indebtedness is worship.* Love and reverence may be paid to creatures: worship is given to God alone. We love a person for the goodness that is in him; we reverence those who excel in goodness; but worship is extended only to the infinite and incommunicable excellence of the Supreme Being.

We should, of course, in acknowledging our relation to God, express not only our own condition of dependence, but also the special excellence of God, His greatness, independence, and majesty, as compared with us. But these are the opposing terms of the one relation, and, therefore, they are expressed by the same act. "By one and the same act," writes St. Thomas, "we acknowledge the excellence of God (the act of homage—*cultus*) and our condition of subjection (*servitus*); and worship

* S. Theol., II., II., LXXXI., 4.

is due on both accounts." * But justice regards not so much the excellence of the giver, as the indebtedness of him who receives; and, therefore, religion as a part of justice will primarily regard and be based upon the indebtedness and dependence of the creature in regard to God.

Corollary.

This being the nature of religion, it follows that any supposed forms of worship which fail to fulfil the conditions we have enumerated are not to be regarded as religions in the true sense or even as parts of the true religion. What are sometimes spoken of as nature-worship, soul-worship or animism, fetish-worship, are not real religions but shadows only, or spurious imitations of religion. The feelings that animate these so-called forms of worship may, indeed, present certain analogies to the religious feeling, just as the fear of a man presents analogies to our fear of God. But just as the fear of a man has not in it even the first beginnings of religious worship, this latter being proper to God alone, so also there is only one kind of worship which is really religious, viz. the worship of the true God. The rest is false religion, superstition, or, as we have said, the shadow of religion only. What these spurious religions are, and what is their relation to the worship of the true God, and how they originated, are questions of great importance; they will be considered in a later portion of the present chapter.

THE PRESUPPOSITIONS OF RELIGION

Without a knowledge of God there could be no religion. We cannot worship that which we do not know. This knowledge and the divine truths to which it relates

* II., II., Q. LXXXI., Art. 3.

are spoken of as the presuppositions of religion. These presuppositions we now proceed to define.

(1) In the first place we must know that God exists. A man could not worship that which is either known to be non-existent or the existence of which is doubtful. Religion is the giving up of one's whole heart and soul to God, and only he who knows and believes that God exists is capable of such an act. Two conclusions follow —first, that since religious worship is a duty, it is our duty also to know God; secondly, that wherever religion exists or has existed, there God either is known or has been known—His name either is, or once was, upon the lips and in the hearts of the people. Now a knowledge of God's existence may be acquired in either of two ways—either by revelation or by the use of our natural reason. It is the second kind of knowledge, that, viz. which is acquired by our natural reason, that forms the first and chief presupposition of natural religion.

How ordinary men may know of God's existence by natural reason alone.

A problem of great interest and importance here suggests itself. Since religion in some form has always existed amongst men, and since religion is the possession not merely of men who are scientifically equipped for the pursuit of difficult reasoning, but of ordinary men also, the question arises how it is possible for the ordinary mind, without the aid of revelation, to come to a knowledge of God's existence. It should of course be remembered, in considering a question of this kind, that for his knowledge the individual is very rarely left to his own resources, that he has always access to, and is, in a sense, necessarily the recipient of the conclusions yielded by the combined thinking of the race or tribe to which he belongs, that most races, even those least learned and civilised, have their special thinkers and teachers, and that to these also the individual can have recourse on problems whose full solution he might regard as exceeding his own individual capacities. The form, therefore, in which our present problem presents itself is whether there are any proofs available for God's existence which lie within the

mental compass of any ordinary individual who cared not only to use his own powers of observation and reasoning but also to avail himself of such intellectual aids as are ordinarily afforded to the individual by his social environment, even amongst the least civilised races?

Our answer (which must be exceedingly brief in form, this question being rather one for the science of Natural Theology than for Ethics) is that there are many ways in which a knowledge of God could be brought home even to the ordinary uneducated mind by reason alone and without the aid of revelation. (*a*) In the first place the plainest and most unthinking man must realise that the world has a cause. That events are produced by causes is a proposition which no ordinary intellect would think of rejecting. The category of cause is as simple and necessary as the category of being itself. Kant and Hume may raise certain metaphysical objections to causality, but these objections would not occur to, or, if they occurred to, would certainly have no weight with ordinary minds. To the plain man it is an obvious truth that the things that he sees around him have not brought themselves into existence, that he himself has not caused his own existence, that his parents are not the full cause of his life since there is so much in the body and mind of man which they do not understand and which they could not possibly contrive, that they themselves are caused by some one outside of themselves, etc. His mind thus naturally travels up to the thought of One who has made all things, the founder and creator of the universe.* (*b*) Secondly, to the ordinary mind the evidences from design are not only most intelligible but most convincing also. The general order of the world suggests the thought of a mind over-shadowing and over-ruling all; the element of design evident in every living thing, in the aptitude of every organ for the performance of its own functions, and in the sum of the organs for providing for all the necessities of our

* Judging from the attestation of those who have had most opportunity of examining and analysing the beliefs of early man, this line of reasoning is not merely to be regarded as a *possible* ground for bis religion—it seems to have been *actually* also the ground of his beliefs. Ed B. Tylor attests that the religious beliefs of the savage races were due not to "spontaneous fancy" but to the "reasonable inference that effects are due to causes." And Mr. J. Buchan in his interesting work, "The First Things," quotes a series of answers given to him by savages as to the ground of their religious belief. In every case their belief was found to be based ultimately on what to them was the obvious necessity for a first cause of all things.

life,* this probably more than any other consideration, not only brings the ordinary mind to a knowledge of the Creator, but brings men also into close touch with God as the supreme ruler, as one who cares for and superintends the things of this world, is kind and bountiful to His creatures, and desires their happiness. (*c*) Again, though, as we saw in an earlier chapter in this work,† the mere existence of a distinction between good and evil and the recognition of this distinction by conscience is not itself a proof of God's existence, yet the conviction of reason that good action calls naturally for reward, that evil action renders a man liable to punishment, that somehow and somewhere the wrongs of this world will have to be righted, that compensation is to be had for pain and suffering unjustly borne, in general terms, that the world is a reasonable world, which it would not be if the tyrant and the robber and the murderer had not awaiting him some retribution for his evil life, all this brings back the mind and heart of man to the thought of a moral governor, of One who will bring all things to a good end, who has pity for suffering, and will defend the noble, the just, the pure, and the truthful, and equalise the losses of virtue with gains a hundredfold. It would, indeed, be difficult to put this argument into a form that would completely satisfy the logician and the sceptic, but it is an argument which makes a powerful appeal both to the ordinary and the educated mind. Our reason revolts at the idea of wrongs for ever unrighted. It is satisfied and tranquillised at the thought of One who is empowered to bring to actual effect those compensations without which the world and life would be not only bitter but unbearable. (*d*) Finally, the heart of man opens at the thought of One who will bring perfect happiness to man ‡ or who will supply the conditions under which such happiness is attainable. Why this burning desire for happiness arising out of the very nature of the human heart, this longing which no finite thing can satisfy, if perfect happiness is nowhere obtainable? Without God man is an unintelligible riddle; through the thought of God the

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* For instance, the fact that animals and men are provided so fully with the organs necessary for the reception, mastication and digestion of food, evidently with a view to the maintenance of life.

† Vol. I., p. 472.

‡ This argument is quite distinct from that just given. The present argument does not suppose the existence of injustice, tyranny, and other evils. It is an argument that would hold even in a perfect world.

whole world, and in particular the world of man, comes to have a meaning, and becomes rational and intelligible.

In these several ways the thought of the ordinary man and even of primitive man rises easily to the conception of God, the creator and ruler of the universe. The arguments we have quoted are not all that are available for the existence of God. They are only the arguments that appeal to ordinary uneducated minds. As they stand they are not even correct but require to be modified in many ways in order to be brought up to the standard of strict scientific proof. But they are accurate in the main, and they make instant appeal to the humble and uncritical mind not hindered in its natural operation by vanity and prejudice.*

(2) Religious worship is the acknowledgment of man's absolute dependence on God and of God's supreme mastership and authority over man. This dependence is grounded on the fact that God is the first cause of all things, that all that we are and have are from Him, and, therefore, this truth that God is the first cause and creator of the world is another necessary presupposition of all religion. For most minds, however, this second presupposition is contained in or is itself a presupposition of the first, since for most minds the argument based on the necessity of a first cause is itself the clearest and most potent proof of God's existence.

(3) We honour and reverence that which is possessed of excellence of any kind. Now worship is honour of the highest and fullest kind. It is honour without limitation and so it can only be paid to One who has in Him the fullness of excellence. Religion, therefore, supposes not merely the existence of God, but the existence

* It is in determining the attributes of the Deity that the primitive mind should almost of necessity go astray. The Deity might present itself as a living being but corporeal, or as a spirit with some material attributes. It is impossible to think that the savage mind could without revelation come to a perfect conception of the attributes of the Supreme Being. But it is to be remembered that these errors of the savage, even though important and far-reaching, do not necessarily deprive his religion of all value as a mode of acknowledging the Divine excellence and man's indebtedness to God—the first cause and ruler of the world.

of a God of infinite majesty and goodness. Nor is it difficult even for the ordinary mind to come by this idea of the infinite excellence of God. For a Being who is the first cause of all must have in Him all possible excellences, since it is from Him that all excellences proceed.

(4) Religious worship would not be paid to a being who stood out of all relation to the universe, who had no care for it, and no desire for worship and love. In other words religion presupposes not merely the existence of a supreme cause but also of a supreme moral governor of the world, of One who not only has a right to expect but actually does also expect reverence and homage from men, who demands obedience to the laws of nature which are His creation, and who will reward the observance of those laws and punish their violation. This presupposition, however, is, like the second, for many minds a part of or at the root of the first, since for many minds it is an essential part of the proof of God's existence.*

* It will be found that all these presuppositions are present even in the lowest forms of primitive religion. Naturally the character under which the Divinity is viewed in the different religions varies with the form of the religion. The polytheistic religions, for instance, acknowledge the excellence of various gods and man's dependence on them—monotheism the excellence of the Supreme Being. Again, in some the excellence most emphasised is that of power, in others bountifulness, in others holiness. But in all we find recognised the existence of a Divinity, His excellence, man's dependence on the Divinity, and some sort of intimate relation of the Divinity with the Universe. This is most easily seen by examining *those definitions of religion which have been formed by various writers in order to express the characteristics common to all religions.* Morris Jastrow ("The Study of Religion," p. 171), for instance, explains these common elements in all forms of religion as the recognising of a power or powers superior to us and beyond our control, the feeling of dependence on this power, and entering into relations with it; Ladd ("The Philosophy of Religion," p. 89) mentions the following: a belief in invisible superhuman powers, a feeling of dependence, a sense of responsibility to those powers. J. G. Frazer ("The Golden Bough," I. 63) and Tiele ("Elements of the Science of Religion," II. 194) give the same conditions in other forms.

We think it right to explain that worship may still be true religious worship even though it is the power of God and not His goodness in the sense of His bountifulness that is most emphasised. The power of God is to be regarded as a Divine excellence just like His bountiful-

THE NECESSITY AND GROUND OF RELIGION

That God exists and is known to exist, that He is the first cause of the universe, that He is infinitely perfect and is the supreme moral governor are, as we have seen, necessary presuppositions of religion, in the sense that no form of worship can be regarded as a religion without them. But these truths are also the grounds on which religion is based and they demonstrate its necessity. For, once it has been proved, as it is proved in Natural Theology, on the ground of clear established fact,* that God exists, is infinite, and is the creator of the world, etc., it then becomes our clear duty to acknowledge God, His power and goodness, and to offer Him the special homage due to His position and His greatness. Thus :

(*a*) God, being the first cause of the world, we depend on Him for all that we are and have. As our creator God possesses a full and special right of ownership over man, stronger and clearer than any other ownership known to the world. And being our owner He is our supreme lord and master, and His supremacy must be recognised and acknowledged by special acts of homage not given to any other being. This special homage is the homage rendered in religious worship.

(*b*) God is not only the first cause of the world but He is a Being of infinite majesty and excellence. God's majesty and excellence are not only greater and grander than the excellence of any creature : they are different in kind : they transcend all other excellences : they

ness and His beauty. Writers, therefore, are not justified in claiming that the religious rites of certain primitive races were not religious in the proper sense because " it is strength rather than goodness that primitive man admires, worships, fears "—(*See* A. H. Sayce, " The Religions of Ancient Egypt and Babylonia.")

* Other than the existence of religion. You could not argue that religion presupposes the existence of God, that, therefore, since religion exists, God exists, and that consequently religion is necessary. The argument would be a vicious circle. The facts alluded to in the text are those facts enumerated in Natural Theology which form the starting point of our proofs of God's existence. See S. Theol. Pars Prima, II. 3.

are the cause and source of all. And, therefore, to God we owe special acts of homage and reverence different from those offered to any creature.

(*c*) God is not only the owner and founder of the universe: He is its supreme ruler and governor. From Him proceed all the laws, physical and moral, by which are determined the being, the structures, the needs, and requirements of all things, and also the courses, movements, actions proper to their nature. Every natural law, physical and moral, comes directly from God; human laws have all their authority ultimately from Him. If, therefore, special honour must be paid to kings because of their special function and prerogative as ruler, to God must be paid the highest and profoundest homage of which the mind and heart of men are capable —a homage reserved for Him alone, and befitting in so far as anything in or from us can be said to befit His greatness.

Objections.

(1) It is impossible that our acts should ever befit the Divine Majesty. Anything that man can do in God's honour falls short of what is due to God.

Reply.—The highest of human acts would indeed be utterly unworthy of God were it not for the Divine condescension which recognises man's impotence to do more than the things lying within the scope of his human faculties, and at the same time is willing to accept his homage, not for what it is in itself, but for what a true child of God would wish it to be, *i.e.*, something worthy of the Divine Majesty.* The value of our acts, says St. Thomas, is to be computed not from what they are in themselves but "secundum quamdam considerationem humanae facultatis et divinae acceptionis." †

(2) Since God is infinite He has in Himself all that is noble and excellent and desirable, and, therefore, our worship can add nothing to His greatness. The homage of the

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* "Never anything can be amiss
When simpleness and duty tender it."
—(Midsummer Night's Dream)

† II II., LXXXI. 5. ad. 3.

creature would, therefore, seem to be useless and out of place.

Reply.—(*a*) Our duty to God is measured not by what our acts confer on God but by what we owe Him. And we owe Him the fullest reverence and allegiance. The child gives to its father in token of love many things that the father does not require. The subject in token of allegiance presents his sovereign with things that a sovereign possesses a hundredfold. (*b*) Even if no glory were conferred on God by our actions, yet to worship and love God is to confer a perfection on ourselves. (*c*) Though by our actions we add nothing to the intrinsic greatness of the Supreme Being, yet our worship does increase His external glory.

Two Erroneous Theories.

(1) The considerations put forward in the present section to establish the necessity and assign the grounds of religion serve to bring into clear relief a great and important truth, viz. that religion is a special virtue, and that there exists a particular and special duty of the religious worship of God. Now, in a remarkable work, entitled, " Religion within the Limits of Reason," * Kant makes himself responsible for the theory that religion consists wholly and exclusively in the leading of a good life, in preserving one's self free from stain, in doing our ordinary duty for duty's sake. In other words there is, according to this writer, no special virtue of religion outside of and distinct from the other moral virtues, and man is under no special obligation of worshipping the Divinity. The same theory is commonly defended by ordinary men, as a justification for their neglect of all religious practices. To lead a good life, they say, is religion enough for me. God cannot be displeased with me as long as I observe the ordinary moral laws.

Now such an expression of opinion is not only false and without foundation of any kind in reason, but is also a grave insult to God and a denial of His sovereign rights. Children should not only observe the commands of their parents and refrain from offending them, but they should render to their parents special love and reverence. A loyal subject, particularly one who has access to his sovereign, not only refrains from disobeying the king's commands, but also renders him special homage, befitting the rank and majesty of a sovereign ruler. To come into the presence

* part IV. ch. 6.

of a monarch, and to decline to pay him any marks of special reverence on the ground that observance of his laws is all that a monarch may justly claim of his subject, would be a grave insult, and a positive irreverence to the person of the monarch and to his position. But Almighty God holds a position raised far above that of any earthly monarch, and His dignity and excellence transcend the excellence of saints and angels and "thrones and dominations." And, therefore, we owe Him special homage and reverence such as no creature may claim or accept even if offered by us. It is true that the acts of the other virtues such as temperance, benevolence, purity of heart, fall under the control of religion and if done out of a religious motive may be made into religious acts (*commanded* acts of religion). But religion has its own special acts (*elicited* acts) just like the other virtues, and to decline to observe the special duties imposed by religion is to decline to acknowledge God's special greatness and His special claims upon His creatures. "God's dominion," writes St. Thomas,* "is of a proper and special nature, for He has made all things, and is the supreme ruler of all, and, therefore, He has a right to special worship."

(2) Another erroneous view may usefully be examined here. We have seen that religion supposes and is based upon our knowledge of God, upon the clear apprehension that God exists, that He is a Being of transcendant excellence, etc. Intellectual certitude and clear intellectual knowledge of a real Divinity beyond us are the first presupposition and the chief ground of all religious worship.

Now there are writers who have tried to show that religion is based not on the clear knowledge of a living God, but on *feeling*, the feeling of some vague unreality felt as lying outside of the known world, but suggested to our imaginations by association with the thought of the known world.† This finite world, it is said, suggests to our imaginations an infinite world or the illimitable; time suggests the timeless, space the spaceless. In this way we come to think of something mysterious, unapproachable, awful, majestic; and it is this thought that elicits in us the act of religious reverence and worship.

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* S. Theol. II IIæ., Q. LXXXI., Art. 1.

† The theory is taught in one form or another by various well-known philosophers, *e.g.* Schleiermacher, Max Müller, Von Hartmann. The various forms of the theory can be seen in such works as E. S. Waterhouse's "Modern Theories of Religion," and Caldecott's "Philosophy of Religion."

But how foreign all this is to the real character of religious worship may easily be shown. Religious worship has in it just those elements that are present in the thought of a child about its father, of a loyal subject about his sovereign, but magnified, enriched, transformed so as to befit and express the special excellence and greatness of the Divine Majesty. It includes love, honour, adoration, sorrow at goodness offended, hope in the Divine greatness and condescension, desire for the fuller glory of God amongst men, and everything else that comes of sonship, loyalty, and devotion to One who is worthy of every honour. We could not love a mere shadowy vacuity; we could not honour an abstraction, an unreality, however immense and undefined; we could not imagine a mere abstraction offended, or pleased, or bountiful, or wise, or patient, or issuing commands, or accepting and expecting honour or love from men, all of which belongs to the very essence of religious worship. The theory, therefore, that religion is based, not on the clear intellectual knowledge of God, but on the feeling of the unlimited, deprives religion of everything that the world from the beginning has regarded as essential to its substance.

THE ACTS OF RELIGION

We have to distinguish between *commanded* and *elicited* acts of religion. Religion may prompt us to, or command, any virtuous act. It may urge us to love our parents, to be patient, benevolent, temperate. These are spoken of as commanded acts of religion. But just as the virtues of temperance and benevolence have their own special acts, so there are certain acts proper to the virtue of religion also, acts to which we are urged by this virtue alone. They are called *elicited* acts of the virtue of religion. It is these elicited acts that form the special object of the present discussion.

Again, acts of religion are either *internal* or *external* according as they are acts of mind only, or involve the use of the bodily faculties and organs also, like speech and movement. Religion is primarily internal, an act of the mind; first, because it is mind that makes an act human and purposeful, and, secondly, because it is

through the mind that we are capable of conceiving and addressing the Divinity. But external acts are also necessary. The external act is always secondary, that is, it has a value only as connected with the internal act. But it has its proper place in all religious worship, and for the following reasons :—

(1) External acts are the natural supplement of internal thought and desire. It is quite natural for man to express his inner thought and emotion by outward signs. Men are not minds only : they are made up of soul and body, and even our most abstract thought is naturally accompanied by external movement. If, therefore, there is question of expressing one's self to God it is right that all a man's expressive power both of soul and body should be utilised in the act. The man whose heart is full of the love of God would compel, if he could, not only his own tongue but the whole earth also to recite God's praises.

(2) We belong to God not in soul only but in our bodies also ; and hence, in as much as our bodily members can unite with mind in reciting God's praises, they ought to be used to this end.

(3) External worship is necessary to internal. By our bodily acts we not only express but also concentrate and intensify the inner act of mind. " Worship," says Father Rickaby, " mostly of the silent sort, worship that finds no expression in word or gesture—worship away from pealing organs and chants of praise, or the simpler music of the human voice, where no hands are uplifted, nor tongue loosened, nor posture of reverence assumed, becomes with most mortals a vague, aimless reverie, a course of distraction, dreaminess, and vacancy of mind, no more worth than the meditations of the Lancashire stone-breaker who was asked what he thought of during his work—' Mostly nowt.' "

(4) Men are by nature social. It is natural to them to communicate their thoughts to one another in regard to the things of common interest and also to unite in

common action for the realisation of those interests. The people come together to celebrate a victory. Together they greet the heroes of the battle-field, cheer for them, pay tribute to them. Together also they throng to hail and honour their sovereign. Now God is the common Father and Sovereign of men. It is, therefore, natural that they should worship Him together, that not only should their hearts be raised to Him individually, but also that they should sing His praises in chorus. And since it is through external acts that men communicate with one another and act in concert, so external acts are necessary for the fullness of religious worship *

In all this reasoning, however, it is supposed that the external act is such as befits the holiness and sacredness of religious worship. To be suitable for religious worship it should fulfil three conditions. First, it should be united to and inspired by inner reverence—external sacrifice for instance without inner reverence is not only not religious, it is an insult to God. Secondly, it should be such an act as is, considering both the requirements of nature and also human understandings and conventions, capable of expressing the interior act to which it is joined. Thirdly, there should be nothing disgraceful or ludicrous in an outward act which is to form part of the Divine service. All these conditions are expressed by St. Thomas when he says that the reason why the externals of idolatry provoked the just derision even of a pagan like Seneca was because men used outward actions in religious services, not as signs of, or as helps to, inner reverence, but as things of value in themselves even though divorced from inner worship, and also because the external acts in which they sought to honour God

* It is sometimes objected that the external act taken by itself is a mere material, mechanical movement—whereas worship should be human and deliberate. The answer is that when the external act is joined to, is controlled by and forms one whole action with the internal, it is not mechanical but human and personal and free.

were empty and meaningless and often positively disgraceful.*

We now proceed to enumerate in a very general way the acts which are included in *latria* or religious worship. They are, as we have already shown, internal acts which are principal, and external acts which are secondary and subordinate.

The internal acts to which our relation to God naturally prompts us are *devotion*, or the dedicating of one's mind and heart to God, and *prayer*, by which we confess our dependence on God and ask Him for what we need.

On the external side it is possible to express ourselves to God in many ways. The first great central act of religion is *adoration*, in which both mind and body bend low before the greatness of God in acknowledgment of the infinite majesty and our total dependence. Then there are *vocal prayer*, beseeching God with tongue as well as heart for aid, the *oath*, in which God's veracity is invoked in confirmation of the truth of our words, thus testifying to God's supreme and unfailing truthfulness, the *vow*, by which something is promised in a most sacred manner to God and, therefore, devoted to His service.†

* II., II^{æ}., LXXXI. 7 ad 3.

† St. Thomas explains that to perform a virtuous action under vow is better than to perform it without the obligation of a vow: and for three reasons, *first*, because a virtuous act done under vow is done from the highest virtue and the highest motive, *i.e.* religion, *e.g.* an act of temperance done under vow is not only an act of temperance but an act of religion in its special and proper sense: *secondly*, the man who not only performs a virtuous act but vows it, places under subjection to God not only his act but his *power* to act, for by his vow he surrenders up his power of acting otherwise; he is, therefore, in the position of a man who gives to another not merely the fruits of the tree but the tree itself, the power to act being the source and root of each particular action: *thirdly*, it is more virtuous to perform a good act with a fixed and undeviating will than with a vacillating will. Under the vow the determination of our wills is fixed and final, for by the vow we put ourselves under the gravest of obligations to do the good act. Weaknesses and temptations will always arise to prevent the doing of good. The vow forestalls these weaknesses, and secures the performance of some virtuous and noble work. The vow is the burning of the boats behind one in the fight for God's honour and for the victory of good over evil in our own lives.

Now, just as many acts of homage paid to a king are also used to reverence lesser dignitaries, so of the external acts just mentioned, some are used not only in our relations with God, but also in our dealings with other persons, *e.g.* raising the hands, bowing the head. Even, however, in the case of these acts it is always understood that any signs of reverence shown by man to God are always meant to signify more than the same things when used in respect to men.

But there is one special external act used to typify our attitude towards God which has always been reserved for Divine worship alone, not only amongst civilised but among uncivilised peoples also, and which forms the most distinctive of all the external acts of religion, viz. the act of sacrifice. "Sacrifice," says Reinach, "is the crucial part of all cults, the essential bond between man and the Deity." In a wide sense sacrifice means any voluntary offering made to God, but in its strict sense it means an act whereby some material thing of value is offered to God and destroyed, disrupted, or altered in some way, in token of God's supreme ownership over it and over all things.* Now, the act of sacrifice understood in this latter sense expresses in a manner possible to no other act God's supremacy over the whole world, and our complete dependence on God. God has not only given form to the world as men bestow a form on marble and bronze, but He has created it out of nothing, and, therefore, He possesses the fullest ownership over all things. By offering to God some external object of value, in the way described, we acknowledge God's supreme ownership in the fullest way possible to man, since, in the first place, we thereby cancel our own ownership over it; secondly, we render human ownership of it, so far as can be, impossible; and, thirdly, the object sacrificed is offered to God as His absolute property.

* Sacrifice is intimately connected with the act of adoration. It is an effect and a sign of the heart's adoration.

THE VICES OPPOSED TO RELIGION

All vices are indirectly and remotely sins against religion, for all sins dishonour God. But there are vices and sins which offend against this virtue of religion in a most special and formal way, in the same way that intemperate acts violate the virtue of temperance, and robbery violates justice. These vices may be divided under two general headings—(1) superstition (2) irreligion.

(1) *Superstition.*

Superstition is any wrong or perverted form of worship. It has always in it the element of Divine worship, but that element is either wrongly used or wrongly directed. It includes two classes of acts: (*a*) the unworthy worship of God, *i.e.* worshipping Him in a false or absurd manner, for instance, singing profane songs or expecting things from God which ought not to be expected; (*b*) giving to other beings the worship that belongs to God alone, of which category of sin the three following are signal examples:—paying divine worship to another person or thing, *i.e.* idolatry: foretelling future events by means not naturally destined to make the future known, as in cutting cards, in which act we either assume divine powers to ourselves or attribute them to the means used, *i.e.* the cards: magic (*i.e.* attempting, without the help of God, to realise effects that lie completely out of man's power and can be realised by God alone) in which act again we give to some other being honour and acknowledgment that are due only to God.

St. Thomas Aquinas takes a broad and very sensible view of the moral character of certain of those practices which are usually spoken of as superstitious. Many strange effects, he tells us, may be produced by the invocation of demons, and such practices are always and obviously sinful in themselves no matter what the circumstances. But sometimes, he explains, strange

effects can be produced without the conscious invocation of demons by the employment of what are apparently quite natural agencies, *e.g.* cutting cards and the use of certain herbs for curing. Are these practices lawful or are they to be avoided as superstitious? We shall answer in St. Thomas' own words—" whenever agencies are employed to produce particular effects some enquiry should be made as to whether the agencies employed are naturally capable of producing these effects. If they are, there is nothing illicit in their use; for there is nothing wrong in utilising causes to produce their proper (natural) effects. But if it should appear that the effects produced are such that the agencies in question could not naturally produce them, then it is evident that these agencies (which we are using) are not really the cause of the effects produced, and that some other power (is producing these effects and) is using what is apparently the agency as a mere outward sign (the real agent and true causal agency being hidden from us). Such effects are wrought in conjunction with some demoniacal power." St. Thomas, however, immediately raises the practical difficulty—how are we to know whether the agency that we are using is not capable naturally of producing the effects in question? It is exceedingly difficult, he explains, merely by examining a natural object to determine what effects it is able to produce. What, asks St. Thomas, could be more mysterious and unexpected than the power of a magnet to attract iron. Merely by examining the structure of the magnet one could never be led to expect that it possesses such a property. And, in the same way, may it not be that the natural agencies employed in these supposed questionable acts are really capable of producing the mysterious effects referred to without the aid of spirits? Again St. Thomas answers in a broad and sensible way: if it seems to your reason, he writes, that the effects in question could be produced by the agency in question, *i.e.* the agency which you yourself

are using, if the disproportion between the two is not perfectly manifest, then there is nothing illicit in using the agency in question. But if it is *manifest to human reason* that there is no proportion, that the agency in question could not possibly produce the effect in question, *e.g.* attempting to foretell the future by looking at certain figures, then your act is certainly superstitious and illicit. St. Thomas in this answer simply assumes that men are possessed of some judgment, of some sense of proportion, that with the aid of common sense and science we should be able to determine that some properties do not belong to certain bodies. Obviously, however, he allows for a large margin of speculation in which certainty is not attainable, in which properties which we regard as not natural may still be real and natural, and may one day become established scientific facts; and within that sphere he is content merely to warn us that all is not certain, and that until certainty becomes possible there is danger.

(2) *Irreligion.*

In superstition there is always, as we said, some element of Divine worship, but spoiled in some way or wrongly directed. Irreligion is marked by the privation of worship where worship should have a place. It consists in positive irreverence towards the Divinity, or in the doing of acts which are contrary to worship. Any irreligious treatment of God, *e.g.* contempt of God, daring Him, blaspheming, *i.e.* wishing evil to God, comes under the head of irreligion; also irreverence towards things dedicated to God, which irreverence may take the form of sacrilege or simony.

All the foregoing acts contained under the two categories of superstition and irreligion are directly and formally opposed to the virtue of religion, the object of which is to give due honour to God.

ON MAN'S DUTY OF LOVING GOD

Religion, as we saw, in its strict sense means the worship of God as defined by justice. In a broad sense it includes also our duties to God, as defined by charity, *i.e.* our duty to love God our final perfection and end. Before bringing this chapter to a close we wish to say a few words on this duty of *loving* God. We will sketch briefly the grounds and nature of this obligation *in so far as they are defined by natural law*, and in so far as they depend on the essential relations of Creator and creature, making abstraction of special benefits conferred in particular cases which give rise to special duties of gratitude and affection.

We must recall to the reader's memory the division * of love into *love of desire* (amor concupiscentiae) and *love of benevolence* or friendship (amor amicitiae) because we are bound to love God with both kinds of love; but the nature of these two as well as the principles in which they issue are very different.

We may be permitted to quote the following passage from St. Thomas Aquinas †:—

"As the philosopher says, 'to love is to wish good to another'; so, therefore, the movement of love tends to two objects, to the *good* which one wishes for a person, either one's self or another; and to the *person* for whom one wishes the good. Towards the good then which one wishes for some one the *love of desire* is entertained: but towards the person for whom one wishes that good there is entertained the *love of friendship*.

"What is loved with the love of friendship is loved absolutely and by itself; but what is loved with a love of desire is not loved absolutely and by itself but is loved for another.

"The love wherewith an object is loved that good may accrue to it is loved absolutely, but the love wherewith a thing is loved that it may be the good of another is love in a restricted sense."

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* Vol. I. p. 319.

† S. Theol., I. II. Q.XXV., Art. 4—translated by Father Rickaby, S.J.

From this it is clear that there are two ways in which we can love God. We can love God as good to ourselves, as an end to be enjoyed by us, as a good for us. In that case we love God as means to ourselves only. It is the love of desire. Or we can love or wish good to God for His own sake. That is the love of friendship. The first is a very imperfect form of love in comparison with the second. But man has a duty, not in revealed religion only but also in natural law, of loving God with both kinds of love.

I. *God ought to be loved for our own sake.*

There is a natural obligation to love God with the love of desire, of loving Him as *our* greatest good, as affording us happiness, as perfecting us fully, and in this respect He is to be loved more than any other object. This is clear from the fact that God is man's final natural end. As we saw, only the Infinite good can fill up man's capacity for desire, and, therefore, God is the final end of human life. It follows from this that He ought to be loved above all other ends because all other ends ought to be subordinated to our last end.

We may add, too, that as "in the arts* there is no limit to the pursuit of their several ends, for they aim at accomplishing their ends to the uttermost," so man ought to aim at this, his last end, with an energy limited by his psychological capacity only. Man ought, then, to love God as his last end more than he loves any other object and with all his strength.

II. *God ought to be loved for His own sake and not merely for the sake of man.*

That God should be loved for His own sake and not merely for the sake of another, even of ourselves, is evident from an enumeration of the ways in which it is possible to love a thing for the sake of another.

* Aristotle, Politics, I. 9.

We may love anything for the sake of another in four ways according to each of the four causes.* "By way of *final cause*, as we love medicine for the sake of health; by way of *formal cause*, as we love a man for the sake of his virtue . . .: by way of *efficient cause* as we love certain persons because they are the children of such a father: by way of *disposition or material cause* as we love a thing by virtue of something disposing us to love it, for example, love on account of benefits received, though once we have begun to love we do not love our friend on account of those benefits but on account of his virtue.

Now in the first three ways God is not to be loved for anything else but for His own sake. For, He is not ordained to another as to an end, being the last end of all: nor is He good by means of anything else, His substance being His goodness: nor is goodness in Him derived from any other, but from Him to all others. In the fourth way God can be loved by reason of something else, *i.e.* the benefits we have received from Him, etc.," but these things should lead us on to love Him for Himself.

It is clear then from these arguments which show forth the great distinctive perfection of God, that God is worthy of love for His own sake and not merely for the sake of another, and that we do not carry out our duty of loving God if we do not give Him a personal love of friendship for His own sake. Man ought also manifestly to love God with a higher love of friendship than he bears to any other friend, since God infinitely transcends every possible friend in every lovable quality. But all this will be made clearer and more compelling by our reasoning in the next section.

III. *Man ought to love God more than he loves himself.*

It was shown in the last paragraph that man owes

* S. Theol., II. II. Q. XXXVII., Art. 3

God a love of friendship greater than he gives to any other person. But in the present thesis we go beyond this, and declare that a man must love God not only above all other persons but above oneself. We here reach the critical point in our discussion. It would seem to be psychologically impossible to love God above oneself, for love, as we have already fully shown,* is based on the union of the thing loved with the person loving, and a man is more one with himself than he is with God who is wholly distinct from man. We saw that friendship proper is not entertained towards oneself, but something greater than friendship, because friendship imports union, whereas the relation of a man to himself is unity which goes beyond union with another. Also, as unity is the principle of union, so the love wherewith one loves oneself is the principle and root of friendship; for our friendship for others consists in wishing good to them as we wish it to ourselves, but in a lesser degree, in proportion as they are removed by differences from unity with oneself. All this was shown in our general dissertation on the ground of friendship. What would seem to follow is that one may love friends, and God most of all; but, as they all fall short of that unity with one which each has to himself, the love for them, which is based on union with another, and which starts from it, must necessarily be less than the love of each for himself. The highest expression of such love would be *dimidium animae*, other persons being always the lesser half of ourselves. And in this respect it is no use to say that God is the infinite good and, so, more loveworthy than oneself. This is quite true, but it ignores the principle on which human love is based, viz. love of self, and of others in so far as they are one with this self. We may call this principle a limitation, an impotence of our will; but it is part of our nature and governs all our acts. Men are not expected to love men who are better than themselves

* *See* Vol. I. p. 319.

more than they love themselves, and so it might not be surprising if it turned out that man's nature was so constituted that he had to love himself more than God whom he nevertheless confessed to be infinitely above him. He might even find a motive for humility in such natural baseness. Indeed, there were writers in the Middle Ages alluded to by St. Thomas * who were so impressed by this difficulty that they frankly declared that the love of God above oneself was wholly impossible.

We now go on to treat of this difficulty, and we shall draw our chief proof of the duty of loving God above all, even above oneself, from the consideration and solution of it.

The love of friendship is based on union with the lover. Our fellow-men have a certain union with us in race and nature, and we love them for this: but they fall away in many ways from unity with us. For in us there are many things that are not in them, and by which we are divided from them; and, therefore, since what we love in ourselves is only partially existent in our fellows, we love them only partially or in a lesser degree than we love ourselves. What we love in ourselves is not in them: but if it were we should love them as much as we love ourselves. We should, of course, still be distinct from them *numero* and in substance, but our perfections and theirs would be the same *specie*: and, therefore, our reason fixing upon this identity would at once make it psychologically possible to love them as much as ourselves, and would impose this love upon us as a natural duty.

Now God is distinct from us *numero* and in substance, but the perfections that are in us are in Him also, and, therefore, it is possible to love Him with the love of friendship. But God has all that is in us and more, all that we love in ourselves but in a higher degree, and, therefore, following out the principle of love already put forward, we ought to love God as much as ourselves

* "S. Theol." I. Q. LX., Art. 5.

and more.* Indeed, since every good that is in us is also in Him, and sublimated and raised to infinite excellence, there is no limit to the greatness of the love which a man who really loved himself will give to God. A friend is an *alter ego*, but lesser: God is an *alter ego*, but greater, and, therefore, lovable above the *ego*. This reason at once dissolves the difficulty and shows that though we ought to love ourselves above all creatures we should love God above ourselves.

Our relation to God as an object of love may also be viewed in another way which confirms the conclusion now reached. God not only has in Him all the good possessed by us, but His excellence is the cause of all the good that is in us. Now, when what we love depends *wholly and absolutely* on any cause, we love that cause principally, because the loss of the cause would be to us a worse and more radical evil than the mere loss of the loved effect. Therefore, a man ought to love God more than he loves himself.

Again, God is the essential and infinite goodness, of which every other particle of existing goodness is a participation. Each one's self is such a particle. And if such a small part of what is found in God fires us with love, *a fortiori*, we ought naturally to be carried away with affection for God, the essential and infinite good.

Finally, God being the infinite good and the end of man, we are related to Him as part to whole. Now every part, as a part, naturally loves the common good more than its own particular good, in the sense that it refers and ordains its own good to that of the whole. The hand, as St. Thomas says, will automatically expose itself to a blow in order to save the whole body. This implies that our own good and welfare should be subjected and referred to God, that the personal love of

* We should, therefore, not only love God as our end, the attainment of whom will give us complete happiness, which is the love of desire only, but we should direct all our happiness, *even the final happiness of attaining God*, to the Divine glory.

God is the final act to which all other love, even that of ourselves, ought to be ordained.

IV. *The love of God is the highest and best of moral acts.**

In the first place this act is better than any act of intellect for it is an act of the will engaged on the highest and noblest of objects. The intellect is a higher faculty than the will: but certain acts of will are higher than corresponding acts of intellect. As the intellect acts by taking objects into itself, the nobility of the operation depends on the intellect. But the will acts by tending to its object and, therefore, the nobility of the operation is measured by the object. Now, in the case of objects inferior to the soul, acts of intellect are higher than those of will, since these objects are elevated by being taken into the soul: but for a similar reason in respect of objects that are superior to the soul the act of the will is better.† Therefore an act of will loving God is better than any intellectual act. It is also better than any other will-act, for its object is the highest and most noble of all.

And not only is the love of God for His own sake better than all other acts, but it is the most unselfish of all. Bishop Butler spoke of even the love of God as selfish—a long-sighted selfishness. In a sense this would be true of a love of God that mainly centred in the happiness which the attaining of God would afford the creature. But it is not true of the love of God for His own sake, which is man's highest act, the crown and perfection of all his best work. Kant also considered that the love of God was selfish, that all love was selfish. The only purely unselfish act of which man is capable,

* This question does not concern the problem whether the *attainment* of the ultimate end is an act of intellect or of will. The present question is—which is our highest moral act?

† "S. Theol." II. II., Q. XXIII. Art. 6, *ad.* 1.

he maintained, and, therefore, the only truly moral act is the doing of one's duty out of respect for duty. And that such an act is most unselfish no one will deny. It is not, however, more unselfish than the love of God for His own sake alone. But in point of nobility and perfection who would compare them? The one act concerns a pure abstraction, a principle, a skeleton of reality: the other concerns the living God, in whom is every perfection, in whom every abstraction has its living source, every principle its living ground, and in whom is the fullness of all being, of all reality.

The love of God being the highest moral act of man, it follows that all other virtues without this love of God must be imperfect; for all virtues presuppose a will fixed and set in the true end of man, and being our highest object He is also our true end. On the other hand, where charity is present all other virtues acquire a merit and a value above that which is proper to themselves, since acts that are ordained to a higher end than that which is proper to them acquire a new excellence from this end.

Again, charity being our highest moral act, our moral perfection lies principally in this act of the love of God. But not in it alone. The love of God does not supersede other human interests: it simply rules them to a higher end, raises them to a higher level. But whereas the love of God is capable of infinite growth, our other affections are limited in their capacity for expansion, it being a rule, as Aristotle says, of all arts and sciences in so far as they are practical, that, whereas the use of the means is limited, the end may always be sought to the uttermost. And so, though human interests are not excluded by, on the contrary, though they may advance along with charity, the wings of charity soon leave them far behind, so that in one who is fired with the love of God, other love, though present, will, *in*

comparison with charity, become steadily weaker. In one that loves God above all things all other affections must gradually lose in power and prominence, taking up less and less of the soul's interest and attention.

APPENDIX

The Primitive Races and Natural Religion

It will be well before closing the present chapter to consider briefly two questions of great historical importance in connection with the subject of natural religion. One is whether a pre-religious period ever obtained in the life of the human race—a period when man had not yet begun to think of God or of anything beyond this world, not a brief period such as on any theory of the origin of religion would be required whilst the problems of religion were taking shape and the human mind was preparing itself for their solution, but a lengthened period such as is in general required for large evolutionary changes—the hypothesis of a pre-religious period being altogether a part of the evolutionist theory as applied to religion. The second question is whether there is any solid foundation for those many theories which explain religion as nothing more than an extension of, a development from nature-worship, magic, animism, fetishism, or some other production of the untutored imagination of the savage races. Having examined two of these theories, we shall then briefly consider the evolutionist view, which represents monotheism as the last stage in the ascending series of the consecutive religious positions occupied by the race of man in its growth upwards from savagery to civilisation.

Before, however, considering these questions we think it well to remark that whatever may be the answer to them, whether primitive man possessed or did not possess a religion, whether his religion sprang or did not spring out of nature-worship, and whether fetishism and polytheism did or did not precede monotheism in time, these things in no way affect the question of the validity of monotheism taken in itself, and in no way lessen the claims of religion on the minds

of civilised men to-day. In science we do not allow the errors of one period to militate against the general body of scientific truth accepted in the next. So also the true religion must still be regarded as having a claim on our acceptance, whatever may have been the errors of primitive man.

I.—The Alleged Pre-Religious Period

It is now a good many years since the first appearance of Lord Avebury's remarkable work on the "Origin of Civilisation," wherein, with great show of scholarship, that writer expounded and developed his celebrated theory of a pre-religious period in human development—a view which was based almost wholly on the supposition that to-day many savage races are without religion, and that the nearer we get down to the primitive stock the more numerous become the cases of religionless peoples. Since, he argues, these present-day lower savage races are all instances of arrested development it must needs follow that at least their mental condition is similar in all essential respects to the mental condition of their remote ancestors, and therefore, inasmuch as these present-day representatives of the early races are without religion, the primitive stock must also have been without religion. To-day, it is contended, whole races or tribes are in the pre-religious period. Originally this pre-religious condition was the condition not of certain peoples only but of the whole human race.

Criticism.

(1) Lord Avebury's theory, although it still has its adherents, may nevertheless be regarded as steadily losing ground in recent years amongst enquirers of almost every school of thought. The facts of history to which Lord Avebury made appeal, and which have been more closely scrutinised in recent times than was possible when Lord Avebury first adopted his theory, will not bear the interpretation then put upon them.

> "There is not the same necessity now," writes Prof. Ladd,* "as that which formerly existed for defending the historical truthfulness of this assumption" (viz. that as far back as investigation has been able to bring us there is no trace of a people without religion.)

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* "Philosophy of Religion," I. 120.

And again, "it is scarcely too much to say that at present all the witnesses on whom Lubbock relied have been shown to have been misled, either by haste, incompetence, or prejudice." *

"Religion," writes De la Saussaye,† "is the specific and common property of all mankind."

"We find," writes Andrew Lang,‡ "no race whose mind as to faith is a *tabula rasa*."

"All savages," writes C. H. Brown,§ "and half-civilised peoples are intensely religious."

"Hitherto," writes Gustav Roskoff,‖ "no primitive people has been discovered devoid of all trace of religion."

"Whether," says Max Müller,¶ "we descend to the lowest roots of our intellectual growth or ascend to the loftiest heights of modern speculation, everywhere we find religion as a power that conquers, and conquers even those who think that they have conquered it."

These testimonies, taken at random from the works of modern writers of high authority, are evidence at least of this, that, even though an isolated people, here and there, may have lost its religion, no large part of the savage world is without a religion in the sense of never having had any; and since on the hypothesis of our opponents the savage

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* In addition to these three sources of error others also should be mentioned, e.g. (*a*) the fact that the true religious beliefs of the savage races are rarely revealed to any others than the initiated of their own tribe. Savage beliefs, writes H. C. Brown ("Bases of Religion," p. 7) contain many "esoteric doctrines designed for the initiated alone . . . who are sworn to secrecy. Outside this kernel an exoteric form for the benefit of the uninitiated is usually put forth that shadows in gross, ambiguous, and misleading terms these inner truths." (*b*) Even Tylor is constrained to recognise that many investigators seem hardly to have been willing to accept anything short of the established theology as in any sense a religion. (*c*) Many writers, like Lord Avebury, while acknowledging the existence of the externals of religion still deny to the rites of certain savage peoples the character of a true religion because of the apparent want of a true religious inner motive, magical incantation (a non-religious motive) often, we are informed, taking the place of propitiation or petition which are the proper acts of religion. We can only say that it is exceedingly difficult to discern the inner motives of races so different from ourselves in their whole mentality. Certainly the difference between incantation and petition is not always clearly discernible.

† "Manual of the Science of Religion," p. 14.

‡ "The Making of Religion."

§ "The Bases of Religion," p. 2.

‖ "Das Religionswesen der Rohesten Naturvölker," p. 178.

¶ "Lectures on the Origin of Religion," p. 5.

races are instances of arrested development and are now in the same position approximately as their prehistoric ancestors, these testimonies are proof also that it is not lawful lightly to assume that the primitive races passed necessarily through a long period of unreligion before the concept of God arose in their minds.

(2) We believe, however, that, essential as it is to produce testimonies of the kind just given lest the opinions of men like Lord Avebury might be regarded as incontestable or at least as unquestioned, what is much more important is that the reader should be given instances of races which were once almost universally regarded as without religion, and which, as the methods of investigation improved, were found to be possessed, behind all the paraphernalia of their very material and often grotesque ritual, of a religion that was not only to some extent spiritual and elevated, but often even monotheistic. We shall here consider a few such instances.

(*a*) THE NORTH CENTRAL AUSTRALIANS

Until quite recently this race was deemed universally, mainly on the strength of the testimony of Messrs. Spencer and Gillen,* to be not only wholly without religion but to be still actually in the pre-religious stage—the stage which precedes the appearance of religion. Now it is exceedingly doubtful whether these people have not at present a religion as genuine and good as that of other Australian races. But, whether they have or not, it is now becoming increasingly certain that at one time they were possessed not only of a religion but of a religion which was genuinely monotheistic. The parts of our proof for this proposition may first be given separately and then presented as one complete argument. *First,* on the admission of Messrs. Spencer and Gillen themselves, there is one exception to their statement that the North Central tribes are without religion, viz. the Kaitish tribe. Not only is this people possessed of a religion but their religion is monotheistic. They worship a Supreme Being under the name Atnatu.† *Secondly,* many other North Central tribes teach the boys undergoing the initiation ceremonies that the All-Father of whom they have been hearing from their parents is a mythical personage invented for the amusement and

* In their work on the "Northern Tribes of Central Australia."

† Spencer and Gillen explain that Atnatu is not regarded as a moral ruler in the sense of rewarding good and punishing evil. This may or may not be true: but Atnatu is at least the Supreme Being.

comfort of women and children. There is still, therefore, amongst these particular tribes a monotheistic religion which is handed down, even now, from parent to child, but which for some reason or other * is now being ousted from the peoples' hearts and understandings. *Thirdly*, according to Mr. Howitt,† the South Eastern tribes, which formerly were united with the North Central, and which, as Mr. Lang ‡ has shown, are more primitive than the latter tribe, still retain their monotheistic religion, acknowledging a Supreme Being under various names and images.

The argument, therefore, afforded in the present case by the study of Comparative Religion is as follows: there is still amongst the North Central tribes of Australia one undoubtedly monotheistic tribe; others are plainly endeavouring to discourage the traditional monotheism which, however, is still being handed down from mother to child in spite of the tribal prohibition; and the more primitive South Eastern tribes, which once were one with the North Central, still preserve their monotheistic beliefs. The only conclusion possible would seem to be that if the North Central Australians are now without religion (a supposition which is not at all to be regarded as certain) this defect is to be attributed not to their being in the pre-religious stage, as our opponents suppose, but to the fact that they

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* The conception of God has probably suffered much and become itself unacceptable to the men of these tribes on account of the absurd myths and legends that have gathered round it. The savage mind is most prolific in the creation of myths and legends.

† "The Native Tribes of S.E. Australia," p. 507. Mr. Howitt endeavours to show that in spite of their belief in a Supreme Being, these people are not really religious on account of the human way in which the Supreme Being is conceived by them. He is supposed to have the shape, the passions, the weaknesses of men. Now such a form of argument is quite unsound for (1) it is natural for savages to imagine their God in human shape as we have already seen, p. 9 (2) These anthropomorphic representations belong as a rule to the mythical side only of these ancient religions. They are not part of the real doctrine of their religion. We admit, however, that it is often not easy to distinguish doctrine from myth. (3) Howitt himself admits that many S.E. tribes regard their Supreme Being as invisible and as producing all things, which is very far removed from anthropomorphism. (4) Howitt makes the naive confession that under favourable conditions their present beliefs might have developed into a genuine religion. It is hard to see how such an assertion could be so confidently made unless the beliefs and practices of these peoples had already in them some element of religion.

‡ "The Primitive and the Advanced in Totemism." Journal of Anthrop. Inst., 1905.

have lost an inheritance which once was theirs, viz. their belief in an All-Father—the title by which the Supreme Being is most familiarly known amongst these simple peoples. "Since," writes Mr. Jevons, "the appearance of Mr. Howitt's work the evidence that the ideas of the Northern tribes are the result of *degradation*, and are a degradation from the South Eastern tribes' belief in an All-Father, has been decisive on the point."

(*b*) SOME AFRICAN TRIBES

Mr. Herbert Spencer and Lord Avebury describe many of the African races as without religion. The Hottentots, for instance, Lord Avebury assures us, show no sign of religious worship and particularly no sign of the worship of a Supreme Being, his chief argument being that in the public life of the people such worship finds no place.* Now we can only express surprise that Lord Avebury would, with the results of recent investigations before him, make himself responsible for the assertion that where the worship of the Supreme Being forms no part of the public religion of a people, His existence is not acknowledged by them nor His rights recognised. No part of the life and customs of the savage races has been more clearly established than the unwillingness evinced by some of these peoples to attempt to propitiate by worship a Being whom they regard as supremely good and just, and whose rulings, therefore, they look on as so perfect as not to be in need of change, particularly at the instance of mere human beings. The lower deities, on the contrary, the attendant spirits, they will freely propitiate.

But Lord Avebury's opinion as to the religionless condition of the African tribes has been disproved utterly by the experience of those who have lived amongst and, therefore, were in a position to understand these African races. Mgr. Le Roy who lived amongst the Bantu peoples of Mid-Africa for twenty years, and who was admitted by some of them to witness many of their most sacred rites, thus describes the religion of these peoples : † "We have seen that the Hottentots have neither temples nor figures. But frequently we find amongst them as well as among the 'San' certain consecrated places which they never pass without leaving some small offering, accompanying their

* "Marriage Totemism and Religion," p. 197
† "La Religion des Primitifs," p. 318.

act with an invocation. . . . In all the encampments of the A-Koa and Beku. . . . I have found a belief in God set forth in clear and living light." He then goes on to describe a conversation with one of this poor tribe who explained to him, in a manner that would not be unworthy of a Christian believer, the tribal belief in the Supreme God the ruler of the world, one who will bring the good to rest and condemn the wicked to torments.

And Le Roy's testimony is borne out by innumerable others. "There is no need," wrote Livingstone, "of beginning to tell the most degraded people of the South of the existence of God or of a future life, both these facts being universally admitted." Dr. Hahn, too, in his most interesting work on the Hottentot tribes,* attests to the belief of these people in a Supreme Being, the cause and ruler of the world. A recent testimony is that of J. H. West Sheane, F.R.G.S. (native commissioner).† "As with the Bantu ‡ faiths," he writes, "so with the Avemba religion, they acknowledge a Supreme Being, Leza, who is above the tutelary spirits of the land. . . . He is the judge of the dead, and condemns thieves, adulterers and murderers . . . there is no special worship of Leza, for he is to be approached only by appeasing the inferior spirits who act as intercessors. But, in blessing, the parent beseeches Leza to protect his child," etc.

(*c*) THE "GODLESS" ANDAMAN ISLANDERS AND OTHER PYGMY RACES

For long the Andamanese were regarded as an indisputable instance of a people without religion. They are in many ways like beasts, wrote Lubbock, with no idea of higher beings, and no religion. Yet when the Andaman Islanders came to be studied *in situ*, as A. Lang remarks, by an educated Englishman, Mr. Man, who knew their language and lived with them for eleven years, they were found to be possessed not only of religion but of a high form of monotheism. Their Supreme Being (Puluga), though imaged in material colours, and surrounded by myth such as the savage imagination cannot fail to weave around all invisible or transcendent things, is nevertheless

* "Tsuni-||Goam the Supreme Being of the Khoi-Khoi," *i.e.* of the Hottentots.

† In Journal of Anthrop. Inst., 1906.

‡ These Bantu peoples extend across the South Mid-Continent of Africa from one coast to the other.

clearly and forcibly and logically conceived. Though like fire, yet, He is "invisible," was "never born," is "immortal"; by Him all things were "created," except the powers of evil: He "knows the thoughts of the heart," is "angered by sin," is "pitiful to those in distress," is the "judge of souls. . . ." *

Much light has of late been thrown upon the present discussion by the comparative study of the Andamanese beliefs with those of the other peoples which, together with the Andamanese, make up the interesting group known as the Pygmy races. The Pygmy races, if not, as many authorities insist, the oldest, are certainly amongst the oldest and most primitive of the races now existing. Putting aside some doubtful peoples, and certain other peoples of mixed blood, we find included in the Pygmy group five principal races †—the Central African Pygmies, the Bushmen, the Aeta of the Phillippines, the Andamanese, and the Semang tribe of the Malay Peninsula. Though now so widely scattered over the earth, it is believed by scientists that all these races were originally one. What is of interest for our present discussion is that they are all monotheistic in religion.‡ In spite of the development of absurd myth and the anthropomorphisms that accompany it, these poor peoples hold fast by their belief in the Supreme God. Strange to relate, also, they all, in one form or another, practise what is probably the oldest of all species of sacrifice, that, viz. of the first fruits. Probably the most interesting of all these races is the Semang of the Malay Peninsula, the most remote and primitive of men, the least affected by the presence near them of other peoples and beliefs. They believe in one Supreme God, who existed before the creation. who is

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* Mr. Man's exposure of an ancient and perhaps not creditably maintained tradition in regard to this poor people did not, as might be expected, escape the censure of his opponents. His article (in Journal of Anthrop. Inst., 1882–3) was criticised in "Folk-Lore," September, 1909, by Mr. A. R. Brown with much vehemence; and the controversy that followed between Mr. Brown on the one side, and Schmidt and Lang on the other, in the pages of "Man" (1910) is of great interest. Mr. Brown's arguments are not only fully met, but shown to confirm Mr. Man's views in an able work by P. W. Schmidt—"Die Stellung der Pygmäenvölker in der Entwicklungsgeschichte des Menschen," p. 203 and foll.

† P. W. Schmidt, *op. cit.*, p. 192 and foll.

‡ Even, therefore, if any doubt remained about the Andamanese religion, it would be removed by the connection of these with the other Pygmy peoples.

the judge of souls and the master of life and death. Scarcely a trace of animism or ancestor-worship is found here, nor any other corrupting or degenerate influence, with the exception of some magic. Their monotheism is practically pure and unspoiled, those other lower elements which are to be found even amongst the less primitive peoples of the same land,* being practically unknown. It is difficult to see how the Andamanese can be now regarded as a test case for the theory of godless primitive races.

(*d*) THE MAORIS

We wish to close this list of instances, which could be multiplied many times, by reference to the Maori people. "Many writers," says Mr. Elsdon Best,† "have touched on the theme of the Maori religion, and almost all such writers have remarked that the gods of the Maori were truly malevolent beings, beings to be feared and placated, to whom no true invocations were recited, but merely crude charms or incantations. Also that the Maori had no conception of a Supreme Being, creative or otherwise. . . It is now many years since we first gained a dim knowledge that the Maori believed in the existence of a Supreme Being. . . . Since that time we have obtained more light. . . . The information so gained, we now offer . . . as evidence that an 'inferior' race, a 'savage' people was quite capable of evolving the concept of a Supreme Being, a creative and eternal God." In the course of his article this interesting writer makes reference to the Maori custom of concealing the full significance of the tribal religion from all but the initiated. In fact only the higher priesthood was allowed to invoke God's name. No image of God was ever fashioned; no offerings were made to Him. Nevertheless all acknowledged the "Great," the eternal, permanent, unchangeable cause of all things, from Whom all life emanated, and Who, though Himself supremely just and good, yet refrains, this people maintains, from inflicting punishment on the unjust and bad.

The foregoing cases will serve to show how, gradually, Lord Avebury's theory is being disproved by facts, how each

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* See later p. 45. Also Le Roy, *op. cit.*, pp. 274 and 275.

† "Maori Religion: The Cult of Io, the Concept of a Supreme Deity as evolved by the ancestors of the Polynesians." Man. July, 1913.

year the veils are being drawn aside, and revealing behind the often gruesome ritual of savage fetishism, ancestor-worship and incantation, a background of genuine religious feeling and belief.

II.—Two Erroneous Theories on the Origin of Religion

ANIMISM

This theory is usually connected with the name of Ed. B. Tylor, and is described in his well-known work on Primitive Culture. A briefer though more thorough-going account of it is given in Spencer's work, the " Principles of Sociology."*

The following is a brief sketch of the theory as developed by Spencer :—

> " Changes in the sky and on the earth occurring hourly, daily, and at shorter or longer intervals, go on in ways about which the savage knows nothing—unexpected appearances and disappearances, transmutations, metamorphoses. While seeming to show that arbitrariness characterises all actions, these foster the notion of a duality in the things which become visible and vanish, or which transform themselves: and this notion is confirmed by experiences of shadows, reflections, and echoes." There must, the savage thinks, be more than one object present under each of these single appearances. The experience of dreams confirms this suggestion. To the primitive man dreams appear real. The savage did the actions, saw the places, carried on the conversation dreamt of. Hence there must be in him a double which goes abroad during sleep and returns again at waking. When people die the savage mind considers that the second self has merely gone away. It will come back again, and its

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* " Principles of Sociology," Vol. I. Herbert Spencer's theory is sometimes spoken of as the " ghost theory " of the origin of religion. But it differs in no essential from the animistic hypothesis of Ed. B. Tylor, except that in Spencer's theory the element of ancestor worship is most emphasised. We are prevented by limitations of space from treating of the supposed place of magic and the " worship " of the *totem* in the development of religion. For these see Durkheim—" Les Formes Élém. de la Vie Rel." Livre II. The account of animism given above will serve to show the absurd length of rein which sociologists are accustomed to allow to their imaginations in theorising on the origin of religion.

return to the body will be what is now spoken of as the resurrection of the body. Thus each thing comes to appear to have a second self, which, when first its existence comes to be suspected, is thought of as like unto the visible self, and to have the same needs and propensities. The second self of the dead man hunts, eats, and drinks in some land beyond our own. These doubles of dead men swarm everywhere. "They are workers of remarkable occurrences in the surrounding world." Men are at the mercy of these ghosts. Primitive man tries first to defend himself against them by the aid of the exorcist and the sorcerer, *i.e.* "antagonistically"; later, losing faith in the efficacy of opposition, he has recourse to propitiation and petition.* The souls of ancestors are not only feared but revered. Some of the rites performed over the dead denote awe, fear and reverence only, some propitiation and petition. "Out of this motive and these observances come all forms of worship." "Every holy rite is derived from a funereal rite." "Remote ancestral ghosts 'come to be' regarded as creators and deities." "From the worship of the dead every other kind of worship has arisen."

Criticism.

Our criticism of this theory which must be of the briefest kind is as follows:—

(*a*) This theory does not now carry much weight amongst anthropologists. As R. R. Marett † says—"the impression left on my mind by a study of the leading theorists is that animistic interpretations have been by them decidedly overdone."

(*b*) This theory of animism supposes that the savage regards all nature as living, each thing being inhabited by spirits. Now the savage may indeed regard some parts of nature as the homes of spirits just as civilised men do, but the supposition that in his mind every tree and every stone ‡

* This change of attitude from exorcist antagonism to petition is also found in Sir J. G. Frazer's theory of the origin of religion as expounded in his now familiar work, "The Golden Bough," p. 77.

† "The Threshold of Religion."

‡ For a statement of the theory that stone-worship was once prevalent amongst all savage races see Hobhouse, "Morals in Evolution," II. p. 5. He explains that stones were at first, through some kind of paradoxical development, worshipped in themselves as inanimate: later they were regarded and worshipped as the dwelling-place of spirits.

has its attendant spirit is absurd. Even the structure of the language of some of those races that are supposed to suffer from this delusion completely disproves such a supposition. Let us take the instance of the Bantu languages (African). The Bantu languages arrange all their nouns under specific categories, some of male, some of female; some of animate, some of inanimate things, showing conclusively that in the eyes of this people the whole world is not animated.* It is not always easy to get at the mentality of savages, but all experience goes to show that their views about the world around them are, like those of civilised men, strange mixtures of truth and falsehood. They are never wholly absurd.

(*c*) The mere belief that behind the trees and stones and mountains there are attendant spirits stronger than us and having power over us could not give rise to religion † any more than the fear of other men stronger than oneself could give rise to religion. All investigation goes to show that all religion is based on the conception of One who created all things, on whom all things depend for their continued existence, to whom, therefore, we are indebted, One also who will punish the wicked and reward the good. This idea of *complete* dependence in the sense that we are *indebted* to God for what we are and have is the essential element in all religion. The mere thought of spirits behind the phenomena of the world could not, therefore, suffice to explain the genesis of religion. Granted, however, the idea of a Creator then the idea of other spirits co-operating with God in the government of the world might easily arise in the savage as well as in the civilised mind. "If man," writes Jastrow,‡ "was without religion before the animistic hypothesis presented itself to his mind animism would not of itself have led to the rise of religion."

(*d*) Belief in the existence of souls surviving after the death of the body which is the essential feature of animism is in the case of every race of men inseparably bound up with

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* See on this point Le Roy, "La Religion des Primitifs," p. 78; Also article on 'Bantu Languages," in Ency. Brit.

† If fear and awe of *personal* spirits behind phenomena could not give rise to religion neither could awe of a mere force that 'leaves in solution the distinction of personal and impersonal" become the basis of religion. To such a force Mr. Marett gives the name of Mana, awe of which he tells us forms the first step in the development of religion. It precedes, he maintains, the animistic period. See "Threshold of Religion," p. 119. Also for criticism of the theory see "Dramas and Dramatic Dances," by W. Ridgeway.

‡ "The Study of Religion," p. 183.

and dependent on belief in the existence of God. No atheist, except those of a purely academic sort, believes in immortality. The savage's belief in souls and spirits presuppposes a belief in God, and, therefore, presupposes some sort of religious worship.

(*e*) It is absurd to regard the savage as believing that when he kills his enemy in sleep his second soul has been out of his body, and committed murder. A day's experience would suffice to demonstrate even to the savage mind the unreality of dreams.

(*f*) Finally, animism is almost wholly unknown amongst some of the oldest and most primitive races who yet are deeply religious, for instance, the Pygmy races which are amongst the oldest and most primitive on the earth.

NATURE-WORSHIP

Other writers maintain that religion began in the awe and wonder aroused in the savage mind by such impressive phenomena as lightning the rising and setting sun, the great forests and mountains.

Nearly all, however, that has been said in criticism of animism applies to the present hypothesis also. The essential characteristic of all religions is that of total dependence on some one above us. Such phenomena as are here described have nothing in common with this inseparable attribute of religion.

III.—Monotheism—the Earliest Stage in the History of Religion

Only the very briefest reference can here be made to the important question,* which form of religion is the oldest, that of monotheism or polytheism and the rest.

Until a few years ago most anthropologists were fully prepared in accordance with their theory of evolution to accept the view that the history of religion represents a slowly ascending series of stages from nature-worship through

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* We are here abstracting from the information afforded by revelation, and relying on natural scientific investigation only, Ethics being a purely natural science. We cannot, therefore, be expected to consider in a work like the present the arguments for a primitive revelation or the theories of Wellhausen and the Assyriologists opposed to such revelation. For these the reader should consult "La Révélation Primitive," by R. P. G. Schmidt.

animism, fetishism, and polytheism, up to monotheism. An opposite theory is now very widely accepted by anthropologists (even those who are very little influenced by religious dogma) to the effect that in the religions of savages there are many indications which go to prove that the primitive religion was one of pure monotheism, that the other forms mentioned represent stages of retrogression and decadence rather than of development, and that their appearance belongs to a comparatively late period in the history of the savage races.

Thus to quote only one or two of the arguments offered:—*

(1) If monotheism were a development out of the rest then it should be the most prominent element in the religion of those peoples where the monotheistic element and the others are mingled together. The opposite, however, is the case. Amongst some savage races fetishism and the rest constitute the most vigorous part of the racial worship, whilst the monotheistic element has every sign of decay upon it, and lies buried under the *debris* of ages so that only the most patient investigation on the part of scientists has succeeded in bringing it to light. And this argument is found to be all the more convincing when it is remembered that the older the primitive race and the less affected by advance in civilisation the more pronounced is the belief in one God, and the fewer and less distinct the traces of animism and polytheism. This will be shown in the third argument to follow.

(2) We know that amongst primitive peoples it is a very common occurrence for one god to come to be gradually represented as many, either through being known by different names, or through the various powers of a god being personified, each, therefore, becoming a god, or for some other reason. The opposite also occurs, *i.e.* the phenomenon of *syncretism*; but it is rare amongst the savage races. Mr. Howitt has given instances of the multiplication of deities amongst the S. E. Australians, Dr. Hahn † amongst the Hottentots, and de Broglie ‡ amongst the more developed

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* Useful expositions of the view here defended are to be found in Andrew Lang's and de Broglie's works mentioned in the notes to our present discussion, in Chr. Pesch's "Gott und Götter," in R. P. G. Schmidt's work, "La Révélation Primitive," and in P. W. Schmidt's able work on the Pygmy Races here frequently referred to.

† *op cit.*

‡ In his interesting work, "Problèmes et Conclusions de l'Histoire des Religions."

peoples.* In these cases, therefore, polytheism and the other forms mentioned would seem to have been preceded by monotheism, not *vice versa*.

(3) It is certain that monotheism is the religion of the very oldest of the primitive races †—fetish-worship, animism, magic, polytheism, and the rest being characteristic rather of the later tribes. In this connection an interesting study in Comparative Religion is afforded by the tribes of the Malay Peninsula. Here there are three primitive Pagan tribes—the Semang pygmies, the Sakai, and the Jakun. The first is the most primitive and isolated. Nomads of the forest, living by the chase, innocent of all kinds of regular business, they are quite unprogressive, and still retain all the characteristics and cherish the traditions that have come down to them from their ancestors in ages past. Their religion is one of pure monotheism. The Sakai are the next "higher" grade. They have mingled to a slight degree with the neighbouring peoples. Their religion is monotheistic, with, however, a notable mixture of the other forms. The "highest" level is that of the half-civilised Jakun. Here the monotheistic element is faint and inoperative as compared with the elements of animism, ancestor worship, and magic.‡

From this it is clear that the nearer one gets to the primitive stock the purer the monotheism, from which it follows that all the rest are accretions belonging to a later period.

Our conclusion is that fetishism, animism, polytheism did not precede the appearance of monotheism; on the contrary,

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* Mere "syncretism" could not explain the worship of one *supreme* God, Lord of all things, which is the worship practised by all the oldest of the primitive races, *e.g.* the Andamanese and the Semang Pygmies. If two tribes worshipping distinct "local" gods unite, these "local" gods may coalesce and become the god of the joint territory and community. But this god would still be "local," not the God of all things. The conception of God as supreme over all things can only rest on reasoning of one or other of the kinds we have described, p. 6.

† The argument is fully given in P. W. Schmidt's work already quoted, and Skeat's "Pagan Races of the Malay Peninsula."

‡ In addition to the arguments given in the text others might also be quoted showing that the savage religions manifest evidences of having been derived from the teachings of Genesis. R. P. G. Schmidt points out that the sacrifice of the first fruits is essential in many of the most primitive religions such as that of the Andamanese. Also the social organisation and monogyny of the very earliest races like the Pygmies, and the S. E. Australians point to Genesis. See the argument in "La Révélation Primitive et les Données Actuelles de la Science," pp. 214–236.

that it preceded them; that in general these cruder religions represent a retrogression; that in fact they are nothing more than so many degraded conceptions such as could hardly fail to appear at some time during the course of ages as accompaniments to a true natural religion in minds and lives so distorted and strange as those of the savage races.*

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* Various theories have been devised to show how monotheism might develop out of polytheism. For instance, it is explained by Hobhouse (*op. cit.* II. 119) that one god might be exalted as king over the rest, or all the gods might gradually come to be identified with one, or all might come to be regarded as manifestations of some one force underlying all things, or from the worship of one *national* god the people might come to acknowledge one God absolutely. It is in this latter way that the Hebrews are said by some to have relinquished "monolatry" or the worship of the national god, Yahveh, for monotheism or the acknowledgment and worship of one God (for a criticism of other theories on the origin of Hebrew monotheism see R. P G. Schmidt's "La Révélation Primitive," etc., ch. 3)

But how unnatural and improbable are all these mental processes in comparison with that simple and natural act of reasoning which would place primitive man in possession of monotheism from the beginning and which consists in no other postulate than that the world must have a cause! The mind of primitive man would not *necessarily* and *naturally* be led to accept the suggestion that the gods have a king, or that their national or tribal god was the only god, or that all gods are manifestations of a single force underlying all things. But the mind of primitive man as well as the mind of developed but uncritical men would naturally and necessarily accept the proposition, particularly if suggested to it, that the world must have a cause. As we said before, a Hume or a Kant might raise difficulties about the notion of cause, but such difficulties would not suggest themselves to primitive man. Nor should it be thought that so abstract and profound a conception as that of an ultimate cause would present difficulties to the savage mind. It is just these abstract and ultimate conceptions that are most easily understood and accepted by the plain mind. The axioms of Euclid are more easily understood than the "propositions." The concept of an ultimate cause moving the world is more easily grasped than the concept of the intermediate causes. These latter represent highly complex things which only an educated man can understand. Our contention, therefore, is that in the absence of proof to the contrary when a primitive race is found to possess a monotheistic religion we should presume that this belief is due to some of those very simple processes of reasoning which we have enumerated in the course of the present chapter, and which could hardly fail to suggest themselves in some way to the primitive races. But this assumption is shown to be fully in accordance with fact from what the investigations of scientific men have now succeeded in disclosing, viz. that it is the later primitive races only that exhibit traces of animism, fetishism, and polytheism, whilst the oldest primitive races are monothestic.

CHAPTER II

A MAN'S DUTIES CONCERNING HIMSELF, AND SOME OF HIS DUTIES TOWARDS OTHERS

In a sense, all a man's duties concern himself or are duties towards himself, for they all concern some good object or end, the attainment of which constitutes a perfection, in some sense, of one's self. Most duties, however, concern the self only indirectly. Directly they are duties to attain some object quite distinct from the perfecting of one's self, *e.g.* our duty to help the poor, to avoid stealing, murder, etc. But some duties are such that the *immediate* object which they concern is one's own self; * their immediate and direct aim is to

* The obvious objection will occur to the reader—how can a man have duties towards himself? Why may not each of us do what he likes with himself? He who owns a book can treat it in what way he likes; why not treat himself in what way he likes? The assumption, it will be added, that each one owns himself is here quite legitimate, for nature has given each man into his own control; he directs himself in all his actions; and what does ownership mean except that a man controls the thing which is possessed, and that he can exclude others from its control? Man owns himself, therefore, and can do what he likes with himself, and, therefore, has no duties in regard to himself.

Reply (*a*) It is not true that man controls himself to the extent that is supposed in this objection and that is commonly assumed. We do not bring ourselves into existence, nor maintain ourselves in existence, and there are thousands of functions, physical and mental, over which we have no control. (*b*) Man, unlike ordinary property, is a *person*, with dignity and rights, and he should be treated with all the respect that personality has a right to, no matter into whose hands he is entrusted, whether his own or those of other people. (*c*) Man has a duty to seek his own perfection, which duty is based on the presence in man of a natural appetite for his own good (See Vol. I. p. 90, and present Vol. p. 52). Man has no such natural appetite towards the preservation of his property. He cannot, therefore, treat himself in the way in which he treats other things. We should explain, however, that a man's duties towards himself are never duties of justice, but of charity only. Justice is essentially a virtue *ad alterum*.

perfect one's self, *e.g.* the duty to improve one's intellect, to strengthen one's character, to sustain life and health. This is the class of duty with which we are here concerned, duties the direct object of which is a man's own self.

OUR PRINCIPAL DUTIES TOWARDS OURSELVES ENUMERATED

Our duties towards ourselves may all be summed up in the one formula, viz. we are bound to seek our own perfection—our own good. Now our good is to be found (1) partly in ourselves, *e.g.* increase of knowledge, the maintenance of health; (2) partly in the possession of objects outside ourselves, *e.g.* friends, money, a good reputation. We may be allowed to refer briefly to each of these.

(1) A man is bound to seek his own personal perfection by the proper exercise of his own capacities. Now we can perfect ourselves in a hundred different ways and along a hundred different lines. But it would be absurd to say that a man should perfect himself or develop along all the lines that it is open to him to pursue. All men possess *in some degree* capacities for studying mathematics, history, music, poetry, painting, law, philosophy, theology, the military art, etc. Not one of these branches is completely closed, by nature at all events, to any individual. But no man could perfect himself along all these lines together, and to attempt to do so would mar our chance of perfection or even of progress along any one. It is absurd, therefore, to insist that men should seek the exercise of all the capacities that they possess. To do so is not only not a law, it is not even in accordance with the economy of nature. The fact is that nature has supplied all men in varying degrees with *all* the capacities that belong to human nature, but she has left each one to determine, in accordance with his circumstances and the requirements of society, in what particular branch he will

develop and perfect himself, or (which is the same thing) what class of human interest he will choose to promote. Some study mathematics, others history: some become medical men, others lawyers, others soldiers, others artists; some undertake the duties of family life, others remain single for the purpose of pursuing some work or furthering some interest which requires personal freedom —the soldier that he may fight battles for his country, the philanthropist that he may alleviate some of the world's sufferings, the missionary in order to belong to the people over whom he is set, to be at their beck and call, and to carry on the work of God untrammelled by any human ties. These and a thousand other lines of pursuit, as wide-extending as the sum of the world's work and interests, are the alternatives which nature so generously opens out before us. In giving to each the full number of capacities, she has, to a great extent, placed the choice of our vocation in our own hands. But she requires that some one choice be made, that at least one line of human perfection be followed.

But there are some things that are a duty for each and all, that are required for the proper ordering of life in every department. Some of these are (*a*) goods of the soul, like knowledge and virtue; some (*b*) goods of the body. (*a*) A man is bound to acquire some knowledge of the law of God, without which his whole life will be imperilled and misdirected. All, too, are obliged to acquire such knowledge as is necessary for the proper performance of the duties that attach to their state in life. Every man also is bound to seek to strengthen and adorn his will with the necessary moral virtues, particularly the virtue of temperance for the control of passion, without which, virtue and harmony are impossible in our lives. (*b*) Every man is under a strict obligation to preserve his health unimpaired. He may indeed fast and abstain, out of certain higher motives, but nothing would justify him in injuring his health by such practices. Then there is

a negative duty not to injure ourselves in any way, and in particular not to destroy our own lives. Of this very grave duty, however, we shall speak at some length presently.* These are all duties that concern internal goods.

(2) We are bound also to perfect ourselves by the possession of certain external goods. Every man is bound, without, of course, undue anxiety, to provide a sufficiency of goods for his own maintenance and the maintenance of those committed to his care. The degree and kind of maintenance will depend on circumstances of a person's state in life. One's calling may, indeed, be such as to induce him, with a fine courage and trust, to throw all his reliance on God or on mankind, and to go boldly forth to do some work of great moment, without any guarantee as to the future maintenance of himself or others. Great saints, philanthropists, and scientists have done so. But in ordinary circumstances a man is bound to rely on himself, and to take no unnecessary risks, but to provide as far as possible for the due performance of his obligations in life by securing himself against want.

Men should also have a genuine care for the good opinion of others. Against this precept it is possible to err in three principal ways—(*a*) making no account of the opinion of others. The esteem of other men is to be reckoned a genuine good, of *value in and for itself*. As such, it is an ornament and a possession which one cannot afford to dispense with. It is also *good as a means*, first, as an aid to the proper accomplishment of duty, for it is easier to work in a friendly environment than in one that is hostile; and secondly as a true norm of excellence—there being few better tests of a man's good character and life than the esteem of those who are in a position to know and understand him. (*b*) We err also by aiming at too much praise, for this is to over-estimate the element of genuine good that is

* p. 52

in human esteem. There is a limit to the value of human esteem just as there is a limit to the value of money; and just as it would be wrong to desire all the money in the world or even superabundant riches, so it is absurd to seek for the esteem of all men, unless indeed our position in society renders the universal esteem of real value to us. (*c*) We do wrong also in setting a higher value on public esteem than on our own independence, surrendering our own judgment in order to be praised by others. A man is worth more to himself than the esteem of all the world can be to him.

But besides valuing the esteem of others, a man should also set a high value on the possession of friends. A true friend is amongst the greatest of human blessings. It would be wrong to despise the friendship of others, just as it would be wrong to overestimate its value by subjecting ourselves completely to others or by seeking to have too many friends. "A few friends for pleasure's sake like sweetening in your food," and "Have neither many friends nor none," are tried and sensible maxims.

Again, men stand in need of amusement and should not be insensible to pleasure, just as one should not overestimate the value of pleasure. Not all pleasures or amusements suit all callings, but there is no calling that cannot be suited by some amusements. Amusements, rationally indulged in, are a true human good both in themselves and as means to the bettering of mind and body.

Of the various duties of a man concerning himself two of the most prominent and important are those of self-maintenance and of temperance. The former gives rise to the problem whether suicide is lawful, the latter to the question of the nature and the law of temperance. We shall devote the remainder of our discussion on a man's duties to himself to the consideration of these two problems—of suicide and of temperance.

OF SUICIDE

By suicide is meant the direct compassing of one's own death. *Directly* compassing death means the desiring of death in itself, and the voluntary taking of effective means to its accomplishment. Suicide must be most carefully distinguished from another class of action which will be considered at the close of our present discussion, viz. the indirect compassing of one's own death through the pursuit of something which happens to result, against or independently of our will, in death; as when a soldier dies in battle, or a patient as the result of an operation. In suicide a man *aims* at death. It is accomplished in two ways, *positively*, as, for instance, by taking poison or stabbing one's self: *negatively*, as by voluntary self-imposed starvation undertaken in order to die. In their moral character there is no difference either in kind or degree between negative and positive suicide. In both there is a positive aiming at death. The difference is only in the means chosen.

We shall first proceed to prove that suicide is radically opposed to the *nature* of the person who attempts it, so opposed that under no circumstances whatsoever could it be justified. Secondly, we shall show that it is an injustice to *society*; thirdly, that it is an insult to *God*.

(1) The first and most obvious element of evil in suicide is that it is a violation of the natural * law in as much as it violates the nature of the individual who commits it. We saw, when treating of the moral criteria,† that the powers of man are directed by nature to the attainment of some object or end, and, through the attainment of such object or end, to the development and fuller being of the individual to whom these powers belong. This principle holds true of every kind of power—intellectual, sensuous, and vegetative. The will from its very nature aims at happiness in the attainment

* And, therefore, of the eternal law of God in which the natural law is grounded.

† Vol. I. p. 90. See 'S. Theol.' II., II. Q. LXIV. Art. 5.

of some end, and, therefore, also at the well-being and development of the individual. The sensuous appetites, like that for food, aim at the fuller life and development of man on his sensuous side. Such vegetative tendencies or appetites as growth and the digestive movements are directed to the well-being or betterment of the substance of the body. It is *impossible that any appetite set up in us by nature should be directed to any other thing than the fuller being of the individual.* It is impossible that it should aim at nothingness or at destruction. A time comes no doubt when the body begins to fall into decay. But this decay is due not to the fact that our natural powers are aiming at decay, but to the fact that they can no longer function, that their working is interfered with, that their objects cannot be attained. The result of this failure to function properly is decay. No natural faculty is directed by nature to its own annihilation, or to that of the constitution to which it belongs. "The tendency," writes M. Guyau, "to persevere in life is the necessary law of life, not of human life only, but of all life."* This natural and necessary tendency of living forces to their own further and completer existence is an admitted fact of science and of philosophy.

Now in suicide a man makes voluntary use of his own powers, and by his act those powers are directed to attain an object the very contrary of that which, by their own nature, they are directed to attain—they are used, viz. not for the welfare but for the destruction of the agent. There could be no more direct or unequivocal violation of nature than this. To use a power and to use it for the accomplishment of what is most directly opposed to its own natural end is the most complete perversion that is possible of nature's purposes and aims. Suicide, therefore, is a violation of nature, of the natural law, and, through the natural law, of the eternal law of God also, on which the natural law is ultimately grounded.

* See Vol. I. of this work, p. 90.

Some Difficulties

The principle to which we have made appeal in proving the unnatural character of suicide suggests the following difficulty: it is quite true that vegetative and sensuous powers tend necessarily to the maintenance and development of the agent. For this reason an animal could neither desire death and extinction, nor attempt to take its own life. But an intellectual being is capable of desiring death, and hence it cannot be true that the intellectual appetite of will is fixed by nature on the maintenance and development of the individual. In the very act of suicide itself, for instance, the agent does not desire his own maintenance or well-being.

Reply.—This difficulty only helps to bring out in a clearer light the universality of the law that all life (indeed all being), of whatever kind, tends naturally and necessarily to preserve itself in being. For, even when a man wishes for death, that act of willing is based upon a still more fundamental movement of will, a movement which is never absent from any act of willing, and on which every human act is grounded, viz. the natural and inseparable tendency of the will to good, to well-being, to happiness, to satisfaction of some kind. Whether we desire to pass an examination, or to take a holiday, or to read a book—in every act the agent simply brings to bear upon some concrete end or object the desire of the will for happiness or the "good." Sometimes the object in which we seek to realise that desire is a real "good," sometimes it is an apparent "good." But in every act we seek to realise this most fundamental of all desires, that, viz. for happiness. In suicide also we aim at happiness or satisfaction, either some positive gratification, like that of disappointing or hurting others, or the negative good of escaping from unhappiness. Our will, therefore, aims always at the well-being of the self, and that aim is maintained even in our attempt at self-annihilation. "Through very love of self," says a writer of note,* "himself he slew." It is this deepest and most fundamental of all desires, this setting which the will has received from nature and of which it can never be deprived, that is opposed and violated, as well as cheated of its natural object, in suicide.

A second difficulty is the following: is it correct to say that in suicide the person desires to compass his own destruc-

* G. Meredith, "The Egoist," p. 5.

tion or annihilation? At death the soul does not disappear. It is a dogma of faith that the body will rise again. Does it not seem, therefore, that what is desired and accomplished in suicide is not annihilation, but a new life, more perfect than the present, and, if so, how can it be said that suicide is a violation of our natural appetite for continued existence and well-being?

Reply.—Natural tendencies are all tendencies to the well-being of the *natural* agent, the agent regarded as a product of nature. Nature could not set up in any thing a tendency towards a condition which is either unnatural or which is even above nature. But the natural constitution of man, from which springs all our natural powers and appetites, is that of a composite of body and soul combined to form one person. And, therefore, our natural desire for happiness is a desire for the happiness and well-being of the *natural* person, consisting of body and soul. In suicide, therefore, we use our natural powers for an end which is the frustration of their own natural purpose.

A third difficulty, the last support and argument of those who contemplate freeing themselves from life's burdens, may be briefly put thus: better even annihilation than a life full of pain and sorrow. Why, therefore, not choose the better and leave the worse?

Reply.—Cold reason answers—there is nothing in this life, no matter how unwelcome to us, that is not better than annihilation. For annihilation is nothing, and in nothing there is no perfection and no "good." And if this reply, though it really strikes at the root of the present difficulty, is regarded as too abstract to afford comfort in bearing the trials of life, we answer that it is not meant to give comfort, but only to represent the true facts of the case. But there are other considerations also that can supply all the comfort and sustaining power that are required. In every life, no matter how unhappy, there is much good. The evil of each one's life is but one of its many elements, and it is outweighed many times by the good. It is the very essence of sorrow, however, that it turns our attention away from the good and fixes it upon the evil, and thus we find it hard to realise that in an unhappy life there is any real good or happiness. *Again* even our natural reason tells us that evil can be turned to good, if not here, at least elsewhere,* if not in this world,

* See Vol. I. p. 86.

then in the next. There are many seasons and many climes in nature, and the good of present losses does not always appear at once or where we will. *Finally*, even if we have no trust in nature itself, still the Author of nature remains, and, as ruler of the universe, He must bring things to a good end. We must be patient and wait for His reward. Better anything than to offend Him by throwing His gift, the gift of life, in His face, and rushing into His presence unsummoned. Suicide is the worst of all solutions for pain and sorrow.

(2) Our second argument for the wrongfulness of suicide is the following: Suicide is a violation of justice as between the individual and society. The individual is *naturally* destined for society,* and, therefore, he is naturally a part or member of society and belongs to society as the part of any organism belongs to the whole. To cut ourselves off from existence is to deprive society of that which belongs to it by the same kind of title by which the limb belongs to the body of which nature makes it a part.

(3) Suicide is an insult to the Creator. The Author of nature has given us all that we are and have. It is for Him who gave us our life to take it from us when He wills, not ours to throw His gift in His face. He has set us in this world in order to work out our perfection here. It is for us to remain at our appointed posts until we are recalled.

The Indirect compassing of one's own death.

Indirectly a man causes his own death, when without aiming at death he does that which results in death.†

* See Vol I., pp. 107, 108; Vol. II., pp. 463, 471.

† So as not to complicate the problem here, we take it for granted that death is foreseen as certain in each case. Usually adjoined to the above conditions is the provision that the more remote the probability that the evil effect will occur, the less the degree of goodness or utility in the other effect that is required to justify our act. Where there is extremely little danger of death any small good will suffice to justify our act. Where death is almost certain, as when a man jumps

It can occur in two ways, *positively*, as when one rushes into battle; *negatively*, as when a man refuses to eat so that another may take the only food available and thereby be enabled to live.

The question whether it is lawful for some good purpose to do an act which we know will result in death leads us back to a problem of great importance which occupied us in the early part of this work, that, viz. of the double effect. We saw * that where an act *which is in itself indifferent* has two results, one good and one bad, it is lawful to do this act in spite of the foreseen evil consequences, provided that three conditions are fulfilled (1) that the evil effect is not desired on its own account; for that would be directly to wish evil, which is never lawful; the evil must be permitted only, not aimed at as an end; (2) that the good effect does not follow from the bad, since, if it did, the evil element would be desired as means to the good; it would be desired, therefore, *in* itself (although not *for* itself), and thus it would be desired directly, which is unlawful; (3) provided also that there is a sufficient reason for permitting the bad effect, or, which is the same thing, provided there is a sufficient proportion between the good and the evil effect, the one in some way counterbalancing the other. Now the problem which we are at present considering is only a concrete instance of this more general problem of the "double effect." Is the indirect compassing of one's own death ever lawful? Is it lawful to do an act which, while accompanied by some good consequence, such as fighting for one's country, or feeding the hungry, involves also another evil consequence, viz. one's own death? From what precedes

from a high tower, only the greatest good or the avoiding of some terrible evil would justify the act. A man may jump from a tower (trusting to some accident to save his life) to avoid the rising flames. But no cause will justify him in shooting himself through the brain. Such an act is not indifferent. Of its nature it is fatal. It is the direct procuring of one's own death.

* Vol. I. p. 39.

it will be evident that such an act is sometimes lawful, but only under the prescribed conditions. It is lawful to do an act involving as a consequence my own death, provided (1) that I do not aim at death; (2) that the good accomplished by my act is not itself the result of my death. It would not, for instance, be lawful for me to starve myself to death in order that some one in whom I am interested might become heir to my property, or in order that by my death I might escape some great evil: (3) provided also that the good effect produced in some way counterbalances the ever grave evil of death. I may go to battle, knowing that I shall die, for the sake of my country's honour. If the surrendering of all the food in my possession is necessary for another's life, I may make the sacrifice without sin, one life, no matter how poor or ignoble, being always sufficiently the equivalent of another life. A captain may stick * to his ship and not attempt to save himself as long as there is even one passenger on board who might require his assistance. Nay, even if none remained, he would be justified in clinging to his post if any glimmer of hope remains that in the end the vessel might be saved. In both cases a great charge is being fulfilled. But if all hope of saving the vessel has departed and no one remains who might require assistance, a captain is bound to try to save his life, not even the disgrace of his failure sufficing to justify him in refusing to make use of such means of safety as are at hand.† Men, too, may lawfully stand aside and not rush for boat or belt whilst the lives of women and children, or even of other men, are being

* Sticking to the ship is an indifferent action in itself. Throwing himself into the sea *in order to be drowned* is not indifferent, but bad: it is the *direct* compassing of one's own death, and could under no circumstances be justified. But as we saw in a note (p. 57) merely jumping into the sea with the hope of not being drowned may be indifferent.

† For two reasons, first, there is no proportion between the saving of his reputation and the loss of his life: and, secondly, he avoids disgrace *by dying*. The good effect follows, therefore, as a result of the bad (see p. 57).

saved. In all these cases the compensating consideration is that of at least one human life saved for each one which is surrendered.

Nor is the saving of another's life always necessary as compensation for the loss of our own. Any great and overwhelming good may suffice as compensation. But in no case may a man *seek* his own death, no matter what the good to be gained. Our right extends only to the doing of that which is in itself good or indifferent or to remaining inactive ; and our action or inaction must be really *necessary* for the attainment of the " good " end to which it is directed, the " good " which justifies us in permitting ourselves to die.

OF TEMPERANCE

In the first part of the present work we explained in a general way the nature of the virtue of temperance and also its various parts, integral, subjective, and potential. It will be necessary here to give a more detailed account of this virtue and in particular to set before the reader, with what fullness the scope of this work allows, an analysis of the law or norm of temperance.

Man is not a being of reason alone. He is a creature of sense also, and out of his sense nature spring a number of sense appetites, *i.e.* of permanent tendencies or inclinations towards certain sense objects. They are of two kinds—concupiscible appetites, or appetites for the attainment of certain pleasurable ends, and irascible appetites, or appetites urging one to the facing and overcoming of difficulties.* Temperance has to do with the first kind of appetite only. Its function is to restrain man from the immoderate pursuit of pleasure.

* This latter appetite is very highly developed in some animals. Dogs and cats will even set themselves to imagine opposition and resistance on the part of some object in order to experience the pleasure of capturing it in spite of resistance.

Now the concupiscible appetites natural to man are very varied. They vary in their objects (and, therefore, in degree of importance), in their strength and intensity, and in the persistence with which they urge one to the attainment of their ends. Most important of all, however, and also, in the design of nature, most difficult of resistance and most persistent in their exercise, are those appetites that concern the maintenance of life. They are two—the appetite for food and drink, by which the life of the individual is conserved, and the appetite of sex subserving the propagation and maintenance of the species. The controlling and directing of these two appetites forms the central and essential function of the virtue of temperance. Other less important and less intense passions or appetites are controlled and directed by the lesser virtues which we speak of as the allied or potential parts of temperance.

The control or government of the passions falling under the virtue of temperance implies the existence of a law or norm of temperance with which the exercise of these passions must be made to accord. This law or norm of temperance we must here attempt to deduce. Like all other laws of human action it is defined by the end or object aimed at. The law regulating the use of the means is always set by the end,* those things being prescribed in every case which are necessary for attaining the end. The law governing the use of the two appetites here under consideration is set by their natural end. Food and drink are meant in the economy of nature for the maintenance of the individual life, and the law governing their use is that they should be used in such a way as to promote life and health, or, at all events, that their use should not be inconsonant with the maintenance of health.† The end of the sex appetite

* Aristotle Nich. Eth., VII.

† "S. Theol.," Q. CXLI. Art. 6. St. Thomas explains (*a*) that a thing can be *necessary* for life in either of two senses—first, for life itself, so that without it life would become extinct, e.g. *food*: secondly, for the conveniences of life, e.g. *pleasant* food. The virtue of temperance

is in the order of nature the propagation and welfare of the race, and the law governing the exercise of this capacity or appetite is that it should accord with the welfare of offspring. Let us examine these two parts of the law of temperance in some detail.

The requirements of health vary in different individuals and, therefore, the rules governing the use of food vary with different individuals. Also the requirements of health and life vary in the case of the same individual with difference of circumstances. The requirements of the law of temperance vary in a corresponding manner. And so it may happen, not merely that wide divergences may occur in the law of temperance governing the actions of men in different sets of circumstances, but that under abnormal circumstances the requirements of temperance may be completely at variance with what is a universal law under normal circumstances. Thus, if a surgical operation is necessary for health and life, and no anæsthetic can be had, it would be lawful to administer whiskey in such quantities as would render the patient unconscious, a thing which could never be lawful under ordinary circumstances. Under all circumstances the bodily health and life of the individual are the norm and law of temperate action.

Opposed to temperance in the use of food and drink is gluttony. The glutton is one who eats and drinks as long as pleasure can be derived from those acts, without care for the governing law of temperance. Gluttony becomes gravely sinful when it leads to serious injury to one's health, when it renders a man unfit to perform the duties to which he is bound by grave obliga-

allows fully for both these necessities. But there are things that are necessary for life in neither of these senses. Of these (*b*) some though not necessary are still not opposed to life in any way; and in some cases they may even promote life and health (*e.g.* the more delicate and expensive foods), and of these, according to St. Thomas, nature allows a moderate use, account being taken of times and circumstances: (*c*) others are opposed to life, and these cannot be allowed. Even, however, in the case of the best food, the quantity should be such as accords with the health of the person.

tion, or when one casts off and despises all thought of law and ordinateness in eating and drinking, and sets himself to seek the pleasures of the palate for its own exclusive sake, making as it were a god of this pleasure.

A special case of gluttony is the condition known as drunkenness—or the condition in which the reason becomes suspended through over-indulgence in intoxicating liquor. The elements of sin here are many. *First,* drunkenness always involves injury to health in some degree. *Secondly,* in drunkenness the faculty which is by nature meant to guide and control us in eating and drinking is itself suspended as a result of drinking. Drunkenness is, therefore, a perversion of the natural order; it is analogous to that other perversion of the natural order which occurs when the citizens of the State seize without reason upon their monarch, cast him into prison and treat him as a subject of the citizens and as inferior to them instead of as ruler. The temporary suspension of reason is not in itself evil. Reason is temporarily suspended in sleep by the gentle operation of nature itself. It is violently extinguished at surgical operations by means of an anæsthetic. But in both these cases, as St. Thomas so well puts it,* reason herself requires the temporary suspension of her own exercise for the sake of the welfare of the individual. Since, therefore, it is reason that prescribes its own suspension in these cases, the order of reason is here fully maintained.† In ordinary drunkenness, however, reason is suspended for no end which is prescribed by reason, but merely for the sake of excess in the pleasure of drinking. *Thirdly,*‡ in

* "S. Theol.," II. II^{æ}., CLIII. 2 *ad.* 2—"rationis actus aliquando intermittatur pro aliquo quod secundum rationem fit."

† To restrain a monarch in obedience to the orders of the monarch himself would not be inordinate in a citizen, since by following the command of the monarch the subject treats him as ruler and not as a subject. It is so also in the case given above.

‡ This third reason is a variant of the second; but it has its own special significance. The second argument emphasises the fact that the guide of conduct is put away, the third that "higher" is made subject to "lower."

drunkenness the higher part of man is made completely subject to the lower. In sleep and in surgical operations reason and consciousness are suspended for the sake of the welfare of the whole man, and the whole man is superior to reason which is a part only. But in ordinary drunkenness, reason, the higher part, is suspended for the sake of a lower part, for the sake, viz. of a passing organic pleasure alone. Drunkenness, therefore, is a subversion of the natural order obtaining between the parts of our human constitution.

The law of temperance *in regard to sex desire* must now be explained. The end of the sex function in the order of nature is the continuance and increase of the human race. For that end the sexual faculty is supplied by nature, and for that end nature has provided a special inclination to its exercise. The law governing the exercise of this function, as in the case of all other functions, is set by its end. The sexual function can only be exercised in a way consonant with the generation of offspring. Any other use of it would be a perversion of the natural order and, therefore, a violation of the natural law. Sometimes, indeed, nature herself, through no fault of the person, fails to realise the end of the function through the sterility of either party. But that failure on the part of nature is not to be attributed to the human agent, and constitutes no bar to the legitimate exercise of the sexual function, the governing law of temperance in regard to which is that, *so far as depends on the human agent,* the exercise of this faculty should be of a kind which is consonant with its end. If the subsequent natural processes over which man has no control fail of their effect, that failure is an accident only, it is not a sin, and represents no unlawfulness on the part of man.

But the law of temperance as governing the relation of the sexes goes farther still. For nature aims in this function not at children only, but at perfect children,

i.e. at children up to the standard of nature—at children, therefore, existing in a condition in which body and mind can be properly cared for by those responsible for its existence, not at children maimed in body and defective in mind, or, through want of the responsible natural guardians, exposed to the danger of a defective existence. But, as we shall see later, an essential and indispensable condition of the welfare and development of the child is a stable union of father and mother bound together for the welfare of their offspring, or what we speak of as the condition of marriage; and, therefore, marriage is an essential antecedent condition of the exercise of the sexual function. Only in matrimony is its exercise allowable by natural law. The future child has a right *even when the foundations of its existence are being laid* to this guarantee of protection and welfare.*

The *chief part* of the virtue of temperance as governing the sexual relations is *chastity*, whereby one avoids all that is contrary to reason and to the law of temperance in the exercise of the sexual function. Governing the less important relations of sex is the beautiful virtue of modesty. Highest of all is virginity, or complete abstinence from carnal desire for the sake of the more perfect exercise of the higher faculties of man, and particularly for the sake of more perfectly worshipping and loving God, the highest and most perfect object of human affection. In every department of human life abstinence has its legitimate place, not only as a virtue, but also as meriting the praise and commendation of men. Men abstain from certain kinds of food and drink in some cases for the sake of their health, in other cases in order to maintain a strong and unclouded

* And this law and condition remain in force even though it is anticipated that there will be no offspring. Nature's laws are determined not by accidents and exceptions but by what normally occurs; and besides it is clear that an act which (whatever may occur through accident) is primarily intended by nature for offspring should not be performed under conditions opposed to the essential and inseparable rights of offspring.

intellect. The philanthropist leaves country and friends in order to carry out great schemes for the happiness of other people. The soldier abstains from marriage in order the more freely to serve his country. The virgin renounces contact with the more material pleasures in order to serve God more closely and unreservedly than the married state allows.

Virginity is lawful because there is no commandment of nature binding each particular individual to marry. The sustainment of the race is a debt which is due not by each individual but by the race at large. The maintenance of the *individual* life is a duty that falls on each individual. Nobody else is in a position to secure this end. But the propagation of the *race*, like progress in the various branches of knowledge, does not require the co-operation of each individual. "There are many needs in a community," writes St. Thomas,* "and one individual cannot meet them all; but they are met by the community through one man fulfilling one need, another another. . . . The precept concerning generation is one that regards the community as such . . . and it is sufficient if some devote themselves to the propagation of the race, whilst others devote themselves to divine things, thus contributing to the beauty and the welfare of the whole race, just as in an army some guard the camp, some bear the standards, some wield the sword, all of which offices are debts of the community, debts which no one man could discharge."

Thus it will be seen that though every man is free to marry, virginity being a privilege and not a law for any man, and though marriage is a high and holy state, yet there is a higher and holier state still, that, viz. of the few who are specially favoured by God with power to renounce the more material pleasures, and are called by Him to undertake offices that require this higher state. But virginity is a virtue for the few only, not for all or for the greater number. The race, with all

* "S. Theol.," II. II., CLII. 3.

its aptitude for greatness, even its aptitude for virginity in some, has to be sustained; and marriage, by which nature has provided for its sustainment, is a condition of great worth, and of high and outstanding merit.

Some of Our Duties Towards Others

Our duties towards others are principally three—the duty of charity or benevolence,* of speaking the truth, of justice. We shall treat briefly of the first two classes of duty in the present chapter. The third will occupy us during many subsequent chapters.

Of Charity

A man is bound to be charitable towards, in the sense of loving, his neighbour, first, because his neighbour is one with him in his human nature. In benevolence we put another man in our own place, and love him as an *alter ego*; and we are enabled to do this because of the unity of all men in their common human nature.† Through this unity of all with all in their common human nature, nature has laid on us an obligation of loving all men, this love being only a natural extension of, or development from, our love of ourselves. This ground of benevolence determines the *measure* also of the law of benevolence—we must love others as we love ourselves. Our duty, however, to love our neighbour as ourselves is not to be understood as meaning that we must love others with the same intensity with which we love ourselves. It means that our love of others must be *like* that which we bear to ourselves. We must

* We speak in the present chapter indifferently of charity, love, and benevolence. The word charity is used here in a wider sense than that commonly given to it. Love and benevolence we treat as the same conceptions. The fine differences between them drawn by St. Thomas in "S. Theol.," II. II^{ae}., 27, 2, need not be observed in our present discussion.

† See Vol. I. p. 318.

wish them well in the same way that we wish well to ourselves.

Secondly, we are bound to love the rest of mankind because we are all parts of one society, and it is a natural law that the part exists for the whole and should promote the good of the whole. It is true that the individual man is not so much a part of society as that his interests are to be treated as *wholly* subordinate to those of society ;* nevertheless the individual is a part, and should, therefore, love his fellowmen and seek their good.

Thirdly, we should love our fellowmen because all men have the same origin and are travelling to the same end. We have come from God and God is our end and home. Things that have the same nature have the same end. If, in this world, men pass as strangers to one another it is because the conventionalities and perhaps the exigencies of society make it difficult for us to realise, in all the relations of our lives, the fact of our common origin and end, the full and vivid realisation of which fact, if allowed full play in our imaginations, could not fail to unify all in the bonds of universal love and sympathy, as all are unified in their origin and their end. It is our imperfections as men that prevent the links of charity from being forged or that cause them to break and disappear as fast as nature and reason tend to form them. However, being imperfect and below the proper standard of human nature, it is as well that the degree of friendship and brotherhood which our common origin and end would justify and even ought to entail, should not in this world be allowed to come to complete fruition.

The love that nature demands from us is not without its due *order* : for men are not all related to one another with the same degree of closeness. Other bonds exist besides those of origin, nature, and final end. Husband

* See Vol. I. pp. 334 and 343.

and wife are most closely related in their common life and in the identity of their immediate daily aims; parents and children, sisters and brothers are identified in community of blood. All these must extend to one another love in its highest degree. Others are related as superiors and subjects, or as comrades carrying on the same work. The bonds here are close and intimate and the love they owe each other should be of a degree commensurate with those bonds. Others, again, are related as compatriots, patriotism being a strong and sacred link. It also should beget a special love. But all men have at least one tie, viz. the element of their common humanity, and, therefore, love is owing to all.

The claims also to which this love gives rise vary as the closeness of men's relationship varies. When aid, for instance, pecuniary or personal, is needed, those who are closest to us have the first claim. But there is no one who has not in absolute distress a claim on our generosity. In pecuniary matters, indeed, it is not possible for any man to help all that require aid, but practically all can help some one, and everyone can at least sympathise with all.

The love of our neighbour has many effects,* and is opposed by many sins. Its effects are, *internally*, joy at another's good, sadness at another's woes, the desire for peace with others; *externally*, beneficence, almsgiving, friendly reproof, administered, not anywhere, at any time, and to anybody, but only when and where there is a hope of producing good results. Opposed to the love of one's neighbour are hatred, a sour temperament, envy, discord, contentiousness, sedition, scandal. Greatest sin of all these is, perhaps, a wasteful and unjust war, where men, on one side and on the other, are treated as beings without rights and as the mere slaves of wanton rulers.

* "S. Theol.," II. IIæ., Q. 28.

Of Telling the Truth

The question of method is of importance here. Some people arbitrarily define a lie as telling an untruth to one who has a right to know the truth; and having given this definition they proceed to draw the not very difficult conclusion that there is no sin in saying what is false unless the person addressed has a right to know the truth. The defect of this method will be obvious when it is pointed out that if adopted generally in morals it could be made to justify almost any act no matter how bad. By *arbitrarily* defining murder, for instance, as the killing of a man who has done me no harm, we might, following this method, then proceed to justify the killing of one who has done me harm—a kind of reasoning which neither moralist nor court of justice could tolerate.

We are about to proceed to the definition of a lie; and the question of method is, as we said, of supreme importance. Now the first thing to be made clear is that in Ethics our discussion relates to things, not words. What we are interested in here is the question whether it is ever lawful to say what one knows to be false. Whether we call this x, or y, or a lie, or anthropophagus, makes no matter to our discussion. We may, however, be allowed to remark that once it is settled that saying what we know to be false is *intrinsically* wrong, the further question whether the same thing is wrong when the person addressed has or has not a right to the truth becomes superfluous. If saying what is believed to be false is intrinsically wrong, it is wrong in every case. Although, therefore, we shall ourselves in the present discussion adopt as our definition of a lie that which men usually understand by lying, viz. saying to another that which one believes to be untrue, we do so because that is, as we have said, what men usually understand by lying, and it is the definition adopted by the leaders in philosophy. But if any one objects that his notion of a lie is different from this,

we can only say, *first*, that this is the meaning which *we* attach to the word; *secondly*, that our discussion here is concerned with things, not words, it is concerned with the morality of declaring that which one believes to be untrue, and that it matters not whether we call this *x* or *y* or a lie; *thirdly*, that, once it has been shown that telling an untruth is intrinsically bad, the reader can then go on, if he wishes, to draw the simple conclusion that to tell an untruth to one who has no right to the truth is bad, and *a fortiori* it is bad to tell it to one who has this right.

I. THE DEFINITION

We define a lie as speaking against one's own mind; speaking against one's understanding of things; saying that something is the case which one believes not to be the case, or *vice versa*; setting up an opposition between one's speech and one's thought: *locutio contra mentem.** These are all one conception, viewed and worded in different ways. As our discussion proceeds it will be useful to emphasise sometimes one form of the definition sometimes another. In order, however, that we may clearly see what is and what is not contained in our definition we shall here expand it into the following form and then explain each part: a lie is any speech, statement, communication, or representation, made to another person, which seriously, that is, really, purports to represent what one believes to be true, but which yet the speaker knows to be untrue.

(a) *Speech, statement, or representation.* Such representation may be made orally or in writing or by any other sign, such as bending or shaking the head, shrugging the shoulders, a nod, anything in fact which is *usually* accepted by men as a statement or the equivalent of one. From this it will be obvious that merely to do

* "S. Theol.," II. II^{æ}., CX. 1—"mendacium nominatur ex eo quod contra mentem dicitur."

things which mislead others is not a lie unless there is made some *statement* whether by word or act. To bear an unperturbed manner outwardly when one is raging inwardly is not a lie.

(b) *Made to another person.* The primary and fundamental function of *speech* is that of communication between one mind and another. We could not communicate our thought to another and each mind and each man would consequently be isolated from all the rest, unless by outward signs of some kind men were capable of expressing their thoughts, and these signs would be useless unless made to another who is capable of understanding their meaning. There is no lie, therefore, in our statement, unless our statement is of the nature of speech, that is, a communication made to some other person. To say, for instance, *when alone*, that the sun goes round the earth or that one's age is twenty when it is thirty, or to say such things to one's dog or cat is not a lie. Communication requires two persons, and speech is of the nature of communication.

(c) *Seriously*, i.e. *really purporting to represent what one believes to be true.* The word "serious" is not here used as opposed to "jocose." A statement made to another and really purporting to represent the truth, is, if it does not represent the truth, a lie, and it remains a lie even when the end which one puts before himself is jocose, *i.e.* when it is meant to create amusement, either for himself or for others. To say to a boy on All Fools' day that his teacher wishes to see him, when it is known that this is not the case, is a lie—a very minor lie, no doubt, but still a lie. The innocence of the end aimed at diminishes, * indeed, the sin of lying, but it still leaves the lying statement what it is in itself, just as any other end would.

* "Diminuitur," says St. Thomas, "culpa mendacii si ordinatur ad aliquod bonum vel *delectabile*, et sic est mendacium jocosum." The holy doctor, had, as we see, an understanding for the delectation of a jocose lie.

It should be remembered, however, that it is possible for the jocular element in our statement to become itself a part of the statement instead of remaining outside the statement, as merely the end to which it is directed. And thus what is often incorrectly called a jocose lie is really not a lie, but a true statement, made up partly of words, partly of jocose acts, and partly, perhaps, of the circumstances, for even the circumstances sometimes "speak." We said before that "speech" is to be understood in a very broad way in our definition of a lie. It includes not only words but any acts that may be utilised by us to express, or even to modify our expression of, our inner thought. Smiling, nodding, a jocular tone of voice may all be used to convey our meaning or part of our meaning, just as well as words; and, provided their significance is understood by people generally, they have a claim to be regarded as a substantive part of our speech. as adding to, or modifying the literal sense of the words used. When a lady of forty claims that she is twenty-two and laughs whilst doing so, all sensible people understand her meaning. Her laugh adds on the new statement—"at least," to the words actually used. The statement "it is a fine day," made when the rain is coming down in torrents, gets a new meaning from the circumstances. The very absurdity of the situation *may* be accepted as giving a new meaning to our words.* Such statements, therefore, are not lies. Taken in their completeness, *i.e.* words, acts and circumstances being all included, they do not oppose the speaker's mind.

We repeat, therefore, that any statement which, while purporting to represent our mind to another,

* The absurdity of the statement is *not always* to be regarded as altering the meaning of our words, and as saving our statement from the guilt of lying. If such were the case there would be no such thing as lying to foolish people or "flats." If our statement, which, taken literally, is false, is to be saved from lying, the circumstances and the absurdity of the situation must "speak" to both the parties concerned, and not merely to the person who makes the statement.

represents the opposite of our mind or belief, comes within our definition of a lie.

(d) *Which yet the speaker knows to be untrue.* There is no difficulty in understanding this last clause considered in itself. But the interesting question arises whether the lie, besides including all cases of statements known to be untrue, includes also statements not known to be true. There is a very great difference between making a statement which is known to be untrue, and making a statement not knowing whether it is true or untrue. Is this latter kind of statement a lie? Obviously it has not been expressly included in our definition, nor do we wish any expression of opinion that is given here to prejudice the discussion to follow. But we may record our opinion that even in the second kind of statement mentioned, the opposition between thought and speech, which we found to be the essential element of the lie, is present in sufficient degree to bring such statement within the category of lying. When a man makes the statement "x is in London," whereas, as a matter of fact, he has no idea whether x is in London or Dublin, there is conscious opposition between the expression used and the thought of the speaker, or the world of reality as understood by the speaker. Even if x should happen to be in London, the expression used, though it does not contradict the fact, yet does contradict the speaker's mind about the fact. The expression used is equivalent to, and is understood by all to mean "the presence of x in London is the fact as known to me," whereas as a matter of fact the presence of x in London is unknown. The expression used purports to represent a positive mentality in the speaker, whereas the speaker's mind is purely negative. He has no mind on the question. All speech purports to represent the world of reality * *as understood by the speaker.* If the statement made accords with this mentality there is no lie: if it does not the expression is a lie.

* or, rather, a particular portion of the world of reality.

Hence saying what one does not know to be true would seem to fall within our definition of the lie.

This lengthened discussion as to a mere definition will perhaps be considered superfluous and aiming at over-correctness. We have, however, been induced to pursue it, because of the many kinds of serious misunderstanding to which St. Thomas' brief definition exposes him. For the discussion that follows, however, it will not be necessary to take account of all the distinctions we have given. In proving the evil of lying we shall confine our attention to the most ordinary case of lying, *i.e.* saying in words and under ordinary circumstances what we know to be untrue. As we said before, it matters very little what we agree to include in or exclude from the definition of the word "lie." The main interest of the moralist centres round the question whether consciously making a false statement, whatever the name by which it goes, is, or is not, in itself an evil act.

II. THE WRONGFULNESS OF LYING

We now go on to show that the lie is intrinsically unnatural and bad. Some writers attempt to base the evil of lying upon the consequences that it produces—misunderstandings, danger to contracts, etc. But these consequences do not constitute the essential and fundamental evil in lying—they are a resultant evil only. If the evil of lying consisted in its consequences only, a lie would be lawful in any case in which the speaker could guard against these consequences *—a conclusion which will hardly recommend itself to the acceptance of even the least exacting of consciences.

The consequences of lying are genuine evils, but they are extrinsic to the act. Besides this extrinsic element, however, there is an intrinsic element also, an intrinsic

* See Vol. I. p. 292.

"inordinateness," to use St. Thomas' words, in the lie itself, which places it in the category of things forbidden, *semper et pro semper*, in all circumstances, and independently of its effects. This evil element is thus described by St. Thomas:* "What is evil of its nature can no wise be good and lawful; because if a thing is to be regarded as good, all that goes to make it up must be good; for goodness supposes soundness all round, whereas any single defect makes a thing evil. But a lie is evil of its nature for it is an act falling on undue matter; for since language is naturally the sign of thought it is unnatural and undue to say in word what one has not in his mind." The foregoing argument makes certain assumptions which require to be explained.

The primary criterion of morals lies, as we saw, in the natural objects or ends of the faculties. Any act in which a faculty is used for an end or object which is opposed to its natural end or object is unnatural, and being unnatural is morally bad. In regard, therefore, to the lie, the question arises—what is the natural end of speech or language? St. Thomas answers in the words—"since language is naturally the sign of thoughts it is unnatural and undue to say in word what one has not in his mind." Language is naturally the expression of thought. If language does not represent thought then what does it represent? This is what all men understand it to represent. Remove that understanding; let it be understood *by common agreement* that when a man says "x is y" neither he nor his listeners should regard the expression as implying that this was also the speaker's belief or thought, and in that case language would have lost all meaning. It would neither convey information nor deceive. Its function would be gone. It could no longer be used as a means of communication between man and man. It would not be language any longer. Speech, therefore, has this as its essential

* "S. Theol.," II^a. II^{ae}., CX. 3.

characteristic, viz. that from its own nature, and in every act, it purports to represent a man's thoughts. We may prevent it from doing so by telling a lie, but even when we do so, of its nature, it carries with it this implication, it purports to represent our thought.* And consequently this being the inner, inseparable, and natural implication of speech, the condition without which language is not language and has no meaning, its natural object and end must be to represent man's thought. When by speaking falsely we frustrate speech of its natural object, using it, not to represent our thought, but the opposite of our thought, then speech is an act falling on "undue matter" and is evil. The lie, therefore, is of its nature evil.

We are now in a position to understand the principle so clearly inculcated in the works of St. Thomas Aquinas that the lie is bad independently of its effects. It is bad, in the first place, whether it deceives another or does not, and whether it is intended to deceive or is not.† In most cases, of course, a man tells lies only to deceive. But there are cases in which a man may have no such intention. He may know that deception is impossible, but still speak falsely for some other end, *e.g.* so as to avoid making a certain admission. But whatever his intention, the intention to deceive is not essential to the lie. The intention to deceive belongs, as St. Thomas says, not to the essence but to the "perfection" of the lie,‡ *i.e.* to its full effectiveness. It is not an absolute requirement. It is an extrinsic effect, not a part or constituent of the lie itself. Again, a lie is bad whether the person addressed has a right to know the truth or has not. "A lie," writes St. Thomas, "has the character of sinfulness not only from the injury which it inflicts on others but from its own

* As Bosanquet says: "The claim to be true is rooted in our assertions." (Phil. Theory of the State," p. 148).

† St. Augustine considered that the intention to deceive was of the essence of lying and necessary to it.

‡ II. II^{ae}., CX. 1.

inordinateness." * It is bad from its very substance and its intrinsic badness is prior to its evil effects—a fact which should be evident from our ordinary conception of the particular disgrace which attaches to lying. For if a man has a right to know the truth, we violate that right quite as effectively by keeping silence as by telling an untruth. But when in addition to merely withholding the truth we also proceed to tell a lie, the whole world recognises a new disgrace in our act. We have now not only denied to another his just rights but we have incurred a special guilt with a special name. We are not only unjust men but liars also. This universal and instinctive method of viewing the lie confirms, we claim, the view expressed in the present paragraph that the lie has an inordinateness of its own, distinct from its effects.

OF MENTAL RESTRICTIONS

Mental restrictions, properly so called, are not lies, and of themselves are not evil. "Non est licitum," writes St. Thomas,† "mendacium dicere ad hoc quod aliquis alium a quocumque periculo liberet: licet tamen veritatem occultare prudenter sub aliqua dissimulatione." There is no untruth unless the words are opposed to the mind of the speaker. Now a speaker may employ a form of words which, whilst effectively concealing his thought, or rather whilst not revealing it, yet in no way can be said to oppose his thought; such a form of words does not fall under the category of the lie.

When a question is put to a man, he may, if he does not wish to give the required information, do either of two things. On the one hand, he may remain silent or rebuke the questioner, or say that he refuses to answer; on the other hand, he may reply by an ambiguous expression, which, intended in one sense opposes the speaker's mind, intended in the other does not. Naturally a speaker who wishes at once to be truthful and yet to conceal his opinions intends

* II. II^{æ}., CX. 3, *ad.* 4.
† II. II^{æ}., CX. 3, *ad.* 4.

his words in the latter sense, and *if this is really a legitimate sense,* then, no matter how his words are understood by those to whom they are addressed, the guilt of the lie is not incurred. Such answers are known as mental restrictions, because they are statements in which the speaker intends his words in a restricted sense, in one meaning out of the many which they are capable of bearing. Thus the master of a house who does not desire to interview his visitors gives orders to his servants to say that he is not at home. Now "not at home" bears two senses for people who are in the habit of visiting. It may mean "out," or it may mean "not receiving visitors," and if the words are intended in the second sense the expression accords with the speaker's knowledge of the facts, and consequently there is no lie.

In all cases of lawful mental restriction it is supposed that the words used really bear the meaning intended, the meaning in the sense of which they are true. If they do not legitimately bear this meaning, if in the common understanding (at least in the understanding of the class of persons concerned in the conversation) this meaning is impossible or absurd, in other words, if the meaning intended, and in which alone the words are true, exists in the mind of the speaker *only*, and not in the words themselves, then the restriction intended is *purely mental,* and the statement is simply a lie.* Thus, if a man when questioned as to whether he had fired a shot into the street answers that he did not, meaning that he did not fire it of his own accord, that he was induced to do so by another, such person makes use of a restriction which is *purely* mental. No sensible person would regard the words "I did not fire" as capable of bearing such a meaning. This meaning, therefore, does not reside in the expression used, but only in the mind of the speaker. Consequently, in the only sense in which the words can be understood, they oppose the mind of the speaker and constitute a lie.

The use of mental restrictions is not without its dangers. It is easy to transgress the bounds of veracious statement by attempting to use words in restricted meanings, for often

* Hence the distinction between restrictions *broadly* mental and *purely* mental. In the first case it is supposed that the sense intended by the speaker, the sense which justifies the use of the statement, not only exists in the speaker's mind, but genuinely attaches to the words also. In the second case the meaning intended is supposed to dwell in the mind of the speaker only. The former kind of restriction is lawful, the latter unlawful.

such meanings do not genuinely attach to them. Besides, a *habit* of using mental restrictions is likely to create a facility in imagining as possible what really are impossible meanings, and often leads to the formation of a lax conscience in the matter of speaking the truth. Very cute and over-careful people who take a delight in hiding their thoughts from others, are likely to become too venturesome in the use of mental restrictions, and often in this way come to be regarded as, and to be, liars.

CHAPTER III

OUR DUTIES TOWARDS OTHERS
(Continued)

On Justice

GENERAL OBSERVATIONS

In an earlier chapter of this work we defined justice, regarded as a special virtue,* as that virtue which inclines a man to give every one his own. It is essentially a social virtue regulating our relations with the rest of society. The virtue of charity also takes account of our relations with others; but whereas charity imposes on us obligations towards other men which are based on the fact that others are one with us in human nature, in blood, in nationhood, or in some other common possession, justice takes account of the opposite of this, viz. our independence of one another, our claims as against one another, our distinction, our "otherness" as persons. It is essentially a virtue *ad alterum*.

Now justice relations arise in society in two ways: † first, as a part or member of society each has certain justice relations to the whole of which he is a part; secondly, he has certain justice relations to the other parts considered as parts. Distributive justice regulates the first class of relations, commutative justice the second class. Distributive justice inclines a ruler as representing the whole of society to distribute the *public*

* In a wide sense the word "justice" is sometimes used to signify "what accords with law." In this sense it is spoken of as general justice, and is the equivalent of "all virtue." But there is a special justice also.

† "S. Theol.," II. II^{æ}., LXI. 1.

goods, such as public money, political honours, positions in the public service, etc., in a just manner, without favouritism, and without injury to the common good; also to abstain from placing unjust burdens, by way of taxation, on any particular class in the community. Commutative justice regulates the actions of each member of society in regard to the others considered as mere parts. Also it regulates our dealings with one another, not in regard to public moneys, but to private possessions.

The limits of our space, as well as the scope of the present work, forbid any discussion on problems of distributive justice, most of which are considered in the special science of Political Economy. The problems in justice that are to be considered in the present work are all problems of commutative justice.

COMMUTATIVE JUSTICE—ITS GROUND

Justice, like every other virtue, is based on the relation of men to their final end. A man is bound to attain his natural final end. This he does by aiming at his own natural perfection. He is, therefore, under an obligation to aim at his natural perfection.* Being under an obligation to attain this end, he has a right to the means that lead to this end. And his right extends not only to the things that are absolutely necessary for this end but to all the means that are supplied by nature, and that promote it in any way, provided that in taking these means he does not interfere with the rights of other people. A man has a right to eat or run or walk or talk or open a business, but he must not, in the exercise of his right, interfere with other persons

We have distinguished means that are absolutely necessary for one's end, and means that are not necessary but that promote this end. To both classes of means

* in some degree.

men have rights, for nature supplies her goods that they may be used for man's perfection. But there is a difference in our rights to these two classes of things. To those means that are absolutely necessary, *e.g.* the food necessary to life, man has an absolutely indefeasible right, a right which cannot be defeated by any human law. To the rest he has a right, but it is a right that can be defeated by the civil law if the good of society so requires: and even if not defeated wholly, it is a right that is largely subject to compromise, in which way only is it possible in certain cases to harmonise the competing rights of different people.* In general, then, it may be said that in proportion as things are necessary for a man's natural perfection and final end, one's right to these things is absolute and indefeasible.

From this it will be seen that in the order of nature the law of justice is a law of equality, that all men are possessed of equal rights, in the sense that they all have the same final end, and the rights of men are determined by that end. In the order of nature, and considering men as human beings only, as persons, and apart from other conditions to be mentioned presently, the rights of men are equal. As a person, no man is mere means to another, the end of all being the same. Human beings, *as human beings*, are all possessed of equal initial rights.

What is meant by this condition of initial equality and how it gives place by natural law to later inequality can be seen by an example. If twenty men, standing in no other relation to one another but the relation of man to man,† happened to be cast on a desert island not one of these men would at the beginning have superior rights to the others in regard to life or property. But soon this initial law of equality would be succeeded by a condition of actual inequality, or, rather, would

* How inequalities arise in men's rights will presently be seen.
† Father and son would have different rights.

itself give rise to such a condition. For in the first place an equal division of property having been made it would soon transpire that the superior strength, energy and ability of one man enabled him to use his property to greater effect than the others, and to the surplusage of the fruits accruing to him over the amount accruing to the others he would have a full natural right. Then, later, we might imagine a further influx of persons into the island, and families being founded, and property transmitted, and in a brief period the original condition of equality obtaining in that small community would be completely eclipsed by the subsequent inequalities. These inequalities would be created by the unequal capacities, energies, and opportunities of the original inhabitants, and also by the exercise of their rights by other persons, for instance, their right to set up such businesses as in no way interfered with the rights of the original inhabitants. And it is important to point out that this condition of inequality in possessions would be quite in harmony with the original law of equality dictated by nature, and would itself arise out of the free exercise of men's equal initial rights; also that to disturb any man in his possessions, even though they happened to be greater than those of others, would be to violate and defeat that very law of equality whereby each in the beginning was made owner of all that he could produce by the exercise of his own capacities. By leaving each man in his possessions, therefore, we maintain the equality required by justice: for which reason Aristotle explains that the end of justice is to maintain or restore equality not in the sense that all should have equal amounts but that men should be left with all that they have justly acquired, and that if this balance happens to be disturbed it should be restored.

In a second way also inequalities would supervene upon the original condition of equality, and without doing violence to that condition. For a group of men

could not long continue to work together without feeling the need of some ruling authority to settle disputes and to combat disorder when it arose, and so they would appoint * one of themselves to rule over them either permanently or temporarily, or each acting in turn, all being equally eligible for the position, but some being more suited to rule than others; and thus beside inequality of possession, there would arise juridical inequality, or inequality in ruling authority; and this inequality would itself be consonant with, and a resultant of, the equal rights of all, for it would accord with the wishes of all, each being anxious to exercise his rights in peace, and, therefore, under a rule that preserved and guaranteed justice and order. Inequalities, therefore, arise not only through the unequal talents, energies and opportunities of different individuals, but through the exigencies of the social body as such. But these inequalities in no way contravene the natural and original equality of the rights of all men as men, or as persons.

In the present chapter we have nothing to do with the relations of ruler and subject. These relations will come before us in a later chapter on the State. Our present discussion relates only to a man's rights to his possessions, and in this respect we now go on to speak of the *end* of commutative justice.

COMMUTATIVE JUSTICE—ITS END

All justice, whether distributive or commutative, aim at establishing equality, not, as has just been said, in the sense that all men should have equal amounts, but that each man should get what he has a right to, and that if any man holds that to which he has no right

* This is not the only rightful way in which a ruling authority appears in society. It is not even the original way as will be seen later in our discussion on the origin of the State. We are here discussing only a particular case.

the balance required by law should be restored. But the kind of equality at which *distributive* justice aims is different from that which is effected by commutative justice. Distributive justice aims at equality of proportion *—at giving to each according to the worth of each, the better positions and the higher salaries going to those persons who are cleverer, more industrious, and of greater value to the State. Commutative justice takes no account of the worth of persons, in the sense that, in deciding what one man should pay another, it treats the parties as men only, as equals, and decrees that if a man has wrongfully been deprived of his possessions they should be restored to him, and in full, no matter what his position, character, or worth. "It makes no difference," says Aristotle, writing of commutative justice,† "whether a good man defrauds a bad one or a bad man a good one . . . the law looks

* "Nich. Eth.," V. 3, 8. Aristotle is here speaking of distributive justice in which connection he gives the following formula: if '*a*' represents one individual (or rather his worth), '*b*' the worth of another, and '*c*' and '*d*' are the respective amounts due to them by the State, then $\frac{a}{b}=\frac{c}{d}$. Of this formula Aristotle also gives an interesting variant showing how the position of the parties after distribution (*i.e.*, the person *plus* the goods received) corresponds with their respective degrees of worth or merit before, *viz.*, $\frac{a+c}{b+d}=\frac{a}{b}$ In commutative justice, on the other hand, '*a*' and '*b*' are treated as equal and, therefore, the problem that confronts us here is the relatively simple one of restoring or maintaining the balance *in things without respect of persons*. Commutative justice deals with '*c*' and '*d*' only.

In V. 4, 3 Aristotle speaks of distributive justice as aiming at geometrical proportion, whilst commutative justice is said to aim at arithmetical proportion. The latter expression is not well chosen, its only justification being that in a certain class of problem commutative justice corresponds with the arithmetical mean between two numbers. Thus if two men have five pounds each, and one steals a pound from the other, their respective possessions are now six and four pounds. Commutative justice requires the re-establishment of the original position which is represented by the arithmetical mean of the two sums. The series 4, 5, 6, Aristotle here speaks of as an *arithmetical proportion*. Moderns call it an arithmetical *progression*. In contrasting, therefore, distributive and commutative justice it is better to speak of the former, as Aristotle does in more than one place, as aiming at proportional equality. Commutative justice may then be said to aim at simple, or absolute equality.

† "Nich. Eth.," V. 4, 3.

only to *the difference created by the injury*, treating the parties themselves as equal and only asking whether the one has done and the other suffered injury or damage."

We now go on to speak of some problems in commutative justice. A man can suffer injustice in three ways—in his person (as by assault), in his character (as by detraction), and in his property (as by robbery). We shall treat of the more fundamental problems arising under each of these headings, devoting the remainder of the present chapter to injuries to the person and to character: injuries to property will be considered in several chapters to follow.

The first set of problems, *i.e.* injuries to the human person, is best introduced by a discussion of the question:

WHETHER IT IS LAWFUL TO KILL ANIMALS?

Our position is that it is lawful to kill animals, and for the following reasons:—

(a) *Animals are not possessed of rights, and, therefore in killing them no injustice is done to them.* Our statement that animals have no rights and that no injustice can be done them will appear strange to readers who meet it for the first time, and will also seem to lead to consequences that are generally repudiated by sensible and feeling men. But a little consideration will show that our contention is far from unreasonable either in itself or in its consequences. Right, as we saw,* is a moral relation, holding between moral persons only, between rational beings. Right is a very different thing from physical force or a physical fact. To have a right to a thing means that it *ought* to be given to one or left in one's possession, and this "ought" and its correlative right may still remain, even though the

* Vol. I. p. 636.

object is not and never shall be actually in the possession of its owner. Right, therefore, so far from being a physical fact of any kind, expresses a moral relation, which only a rational being is capable of understanding, and which obtains in the sphere of reason and rational beings only. · Only a rational being is capable of understanding the conception of "oughtness." And, therefore, since animals are not possessed of reason and are not moral persons, they lie outside the sphere within which rights obtain.

These propositions we have established in an earlier chapter of this work, and our proofs need not be repeated at this point. But we may here be allowed to mention, as an indication of how far removed animals are from the order within which rights obtain, the fact that an animal *from its very nature* is incapable of *claiming* anything as its own. An animal may use claws and teeth to hold what it has, but it cannot *claim* anything as its own, either externally, by an outward expression of its will, or internally by any mental act. For claiming is an act of reason and it relates to an object which, as we have said, the animal is wholly incapable of conceiving, viz. that something *belongs to* it, that is, that something *ought* to be left in its possession, that it has a *right* to something. Being incapable therefore, of an act of claim, incapable, i.e. *not merely now but for all time,* it cannot be regarded as having rights. Right and the power to claim what is one's right are inseparable conceptions. Children and idiots may, indeed, be incapable of *actually* claiming what is theirs. But they possess at least the faculty by which claims are made, viz. reason. Animals do not possess the *faculty* of claiming. Therefore, they do not come within the world of rights.

Nor does the admission of this principle that animals have no rights embarrass us by the conclusions to which it leads. Though animals have not rights, and we have no duties *to* or *towards* animals, we yet may have

duties *about* or *concerning* them, duties *to* their Supreme Owner, all of whose creatures must be used according to reason. What the extent of our rights is, and what the restrictions placed upon our liberty in regard to animals, will be seen in the course of the present chapter.

As animals, therefore, have not rights, it cannot be an injustice to kill them.

(b) *Animals exist for man.* It is highly necessary that we should have a right sense of the meaning of this important proposition, which is often misunderstood. When we say that animals exist for man our *direct* meaning is not, as is commonly stated, that the Creator had no other purpose in His mind than that they should serve men, and that they would never have been brought into existence had man not been created. What reference our present principle bears to the mind of the Creator will be seen at the end of this section. But, directly and immediately, all that we mean when we say that animals exist for man, is that in the natural order the less perfect is always used, and graded, as means to the more perfect; and since animals are of a lower and less perfect order of nature than men, they exist in nature as means to man.

In showing how nature in all cases subordinates the less perfect to the more perfect, using the former as means to the latter, St. Thomas makes use of an illustration which, to our mind, is really more than an illustration, for it furnishes independent proof of the special position which the inorganic, the vegetable, and the animal world occupy in the scheme of natural things in relation to man. In the first place St. Thomas makes reference to a well-known and indeed obvious principle of growth (*generatio*) or evolution, a principle that follows from the very meaning of growth, viz. that in the process of growth each earlier stage subserves and is means to the accomplishment of the next later, and that the whole group of stages is means to the final product. The seed is means to the young plant, the growing root

and stem are means to the fully developed tree.* Now this principle holds good for everything that is subject to natural growth, but St. Thomas considers it in special connection with the growth of the human embryo, *i.e.* with man himself in his becoming. The human embryo † is at first a living object, a plant, one, no doubt, which nature endows with special potentialities, but still, so far as nature, form, and actual capacities are concerned, a plant. Later, this same embryo reaches the animal stage: it becomes endowed with the structure, powers, and qualities that belong to the animal nature. Finally, the crown and flower of the whole progressive series appears: that which was a plant and animal becomes a human being. In this process of development each earlier stage is but a means to, and exists for the sake of, each later and higher stage. Plant-life is by nature made to serve as means to animal, animal as means to man. Hence, taking a wide survey of the order and economy of nature, we find that nature herself ordains the vegetative and animal kingdoms to serve as means to man.

An argument of less importance than that which precedes, but on which Aristotle principally relies in estab-

* From which we conclude not only that *this* seed is means to *this* tree, but that the seed species is means to the tree species; so also it will follow from St. Thomas' argument that the plant and animal *species* are means to the human *species*.

† We are here only expanding the broad and careful, though brief, exposition of the natural law as given in "S. Theol.," II. II^ae., LXIV. 1. "In generationis via," St. Thomas writes, "natura ab imperfectis ad perfecta procedit, et inde est quod, sicut in generatione hominis, prius est vivum, deinde animal, ultimo autem homo, ita etiam ea quae tantum vivunt ut plantae sunt communiter propter animalia; omnia autem animalia sunt propter hominem; et ideo si homo utatur plantis ad utilitatem animalium et animalibus ad utilitatem hominum, non est illicitum." Notice that St. Thomas does not represent the embryo in its first stage as *merely* a plant or *merely* living, but as a *living thing*. In fact he contrasts it with other plants "quae *tantum vivunt*." The fact that the early embryo in the course of its growth is found at length to transcend the plant nature, and to become an animal, shows that in the beginning it is not a *mere* plant, that it is a plant endowed with special potentialities in virtue of which it grows into an animal. In the same way in its second state the embryo is not *merely* an animal. It is all through potentially a man.

lishing the view that animals exist for man, is to be found in the fact that nature provides men with organs and capacities for the use of the inferior orders of things, and thus indicates her intention that they should be used by men. Not only has nature provided man with organs for obtaining, eating, digesting, and assimilating vegetable and animal food, whereby almost exclusively we live, but she has also provided the gift of reason whereby these inferior things are put to innumerable other uses, which uses constitute a great part of what is included in, as well as being indispensable to, natural human development. These inferior things serve for purposes of "clothing and various instruments," * as means to amusement, travel, industry, art, and other human pursuits. Now, if we may not use the inferior species as means to human progress, our capacities for using them have been given to us in vain. And, therefore, "since nature makes nothing incomplete," writes Aristotle, "and nothing in vain, the inference must be that she has made all animals and plants for man."

The natural law, therefore, ordains both animal and plant for the use of man, and as means to man. But we saw in a preceding chapter † that the natural law is a reflection of the eternal law of God from whom all nature proceeds. And hence we are empowered to draw the conclusion that the Author of nature as well as nature herself ordains the inferior creatures for our use. We may, therefore, kill animals for the sake of some human purpose.

(c) *Animals are naturally slaves.*‡ That which is not self-directive, naturally lies in the control of another. Now animals are not self-directive, self-determined, but are moved either by some outer force or some inner impulse which they do not themselves initiate and

* "Politics," I. 6. In these brief words Aristotle includes all the uses which it is possible to make of the lower creation.

† Vol. I. ch. xix.

‡ The expression occurs in Aristotle, "Politics," I.

which they cannot control. They are thus, as St. Thomas remarks, always "moved *as it were* by something else." * But man is a person, self-directive, *sui juris, propter seipsum existens.*† Into whose hands, therefore, is the animal world entrusted if not into his?

From all this it follows that in the order of nature man is justified in using the lower animals as means to human progress or welfare; and that he is justified even to the extent of killing them if killing is necessary or even contributory to human welfare.‡

But the same principle which justifies us in using animals for purposes of human welfare or development also fixes the limits of our rights in their regard. Our use of animals, as of all things else, must be rational, *i.e.* it must really serve some useful human purpose, some true human good. In this respect it would be wrong to take a narrow view of what it is that constitutes a true human good, for in our dealings with animals, even more than in our dealings with men, it is a good thing to widen the sphere of human liberty to the extremest limits which the law allows. Accordingly we may say that it is our right to use animals for any end which in the judgment of ordinary men would be regarded as a part of human welfare. Animals, for instance, may be killed in the hunt for the pleasure afforded by hunting, but they may not be tortured for the mere pleasure of witnessing their pain and embarrassment. The former contributes to health and well-being, the latter confers on men no good of any kind. It is nothing more than an exercise of cruelty, the gratification of a perverted instinct for pleasure.

* "S. Theol.," LXIV. 2.
† "S. Theol.," LXIV. 2, *ad* 3.
‡ St. Thomas regards killing as the most obvious right of all. If you may lawfully use them, he writes, you may lawfully eat them; and then adds naively, "and eating involves killing."

and, besides, it disposes men to cruelty not only with animals but with human beings also. The torture of animals is not indeed a violation of the *rights* of animals, for, as we saw, animals do not fall within the sphere of moral rights : but it is a violation of our rational human nature and of the precept of the Author of our nature that human acts should be done according to reason.

An interesting question arises in connection with our present discussion on man's rights in regard to animals, viz. the question of VIVISECTION, *i.e.* the dissection of the *living* animal for the purpose of demonstrating some fact or law of science. Vivisection is lawful because it promotes knowledge, and knowledge is a true human "good." But in vivisection it is possible to exceed our rights since there are some kinds of, and some circumstances attendant on, vivisection that in no way contribute to any useful human purpose. Thus the needless infliction of pain is unlawful since what is needless is not contributory to the purpose in view. The chloroforming of animals in vivisection is not in general required by the moral law, since often such a precaution would be gravely inconvenient to the work of research, but where the use of an anaesthetic is in no way prejudicial to the work of the scientist the benefit of a painless dissection should be extended to the animal.

A principle to be remembered in this connection is that the degree of latitude allowed in inflicting pain is *to some extent* to be measured by the degree of good which ensues from the experiment which is made. In actual *investigation* it would be difficult to regard any degree of pain as forbidden if taking precautions against it would cause inconvenience in one's work, since progress in science depends almost wholly on investigation. In the *lecture hall*, on the other hand, one should not inflict more pain than is really required for purposes of clear illustration.

On Personal Injuries

We shall consider six questions under this heading :—

Whether it is lawful to put criminals to death ?

Whether it is lawful directly to put an innocent man to death ?

Whether it is lawful to kill in self-defence ?

Whether accidental killing is a crime ?

Whether duelling is lawful ?

Whether it is lawful to interfere with a man's liberty ?

I. WHETHER IT IS LAWFUL TO PUT CRIMINALS TO DEATH ?

We think it well to quote the words of St. Thomas Aquinas in answer to this question.

" It is lawful to kill brute animals in as much as they are naturally meant for the service of man, the imperfect being a means to the perfect ; now every part is referred to its whole as the imperfect to the perfect ; and, therefore, every part naturally exists for the whole (as means to its realisation). Hence we see that if it be expedient for the welfare of the whole body that some member should be amputated by reason of its being bad and corruptive of the rest of the body, the removal of that member is praiseworthy and salutary. But every individual person is related to the whole community as part to whole ; and hence if any man be dangerous to the community and is corrupting it by reason of some crime then it is right and wholesome that he should be put to death for the sake of the common good."*

This argument brings us a certain distance on our way, but it requires to be supplemented by another which is also to be found in St. Thomas' work. No doubt the reason why a criminal may be put to death is because he is a corrupt member of society, and through him the whole community is injured. But still we are left face to face with the difficulty that a human being even when he commits a crime does not cease to be a human being. Now, as we saw before,† a human being though he is naturally a member of society, is not to be regarded

* " S. Theol.," II. II^æ., Q. LXIV. Art. 2.

† Vol. I. p. 334.

as a *mere* member, or a mere part, and though as part he is a means he is not a *mere* means to society. On the contrary, he is a person, *sui juris* and as St. Thomas declares, "propter seipsum existens," * in the sense that he is not a mere means to anything else in nature. But by putting a criminal to death for the common good, society treats him as a mere means, as a mere member of the organism, to be sacrificed for the good of the organism. How is this possible?

We answer—it is as a rational being that man is a person, *sui juris*, "propter seipsum existens," and not a *mere* means to anything else. But by offending against the law of reason man *withdraws himself* from the order of reason, falls below that order; and society is empowered to withhold from such an individual the rights of an independent person, treating him as a *mere* part of society, and may for the sake of the common good put him to death.

In this deep and far-reaching answer we are given the reason not only why a criminal may be put to death, but why also an innocent man whose life is a menace to society (for instance because he is diseased in body, or because a foreign ruler has decreed to destroy the whole community if a certain innocent man is not put to death) must still be treated as one who has a right to his life. Such a one has not receded from the order of reason, and, therefore, he still retains the privileges of a rational being, and cannot be treated as a *mere* means to the community in which he resides. He cannot, therefore, be sacrificed for the good of the community by being put to death.

St. Thomas merely lays down the abstract principle that a criminal may be put to death because as a diseased member he is corruptive of the whole of which he is a part. He does not say in what cases he may be put to death. There is really no general rule assignable, and the cases in which society will put a subject to

* Q. LXIV, Art. 2, *ad* 3

death will vary with the temperament and traditions of peoples and the needs of States. Two things, however, may be noted in this respect. One is that a subject can only be punished for an external act; for it is through their external acts that men communicate with their fellow-men, and act as part of the community. Another is that even though now-a-days States will only put a man to death for crimes which manifestly and directly affect other parts of the community, *e.g.* murder, still this prerogative of the State could be exercised even where the direct effects of the crime which is committed do not extend to other individuals, where, in other words, the crime is private and where the only effect on society is that a part of it (the offending member) has gone bad. A corrupt member, *even though its corruption does not extend outside itself*, is a derogation to the dignity and worth of the whole body politic.

Only the public authority can inflict death. For the killing of a criminal is lawful only in as much as it is directed to the welfare of the whole community; from which it follows that the infliction of death appertains to him only who has charge of the welfare of the community, just as the amputation of a limb is performed by the surgeon to whom is committed the welfare of the whole body, or by another deputed by him. Now it is to the public authority that the care of the community is entrusted, and, therefore, only the public authority or some one commissioned by that authority may lawfully put a person to death.

Also, a particular individual, when commissioned by public authority to put a criminal to death, can do so only as representing public authority and the whole community. It would not be lawful for him, even when so commissioned, to slay a criminal for any private end such as vengeance. By harbouring such an intention he would incur, internally at least, the guilt of homicide.

2. WHETHER IT IS LAWFUL TO PUT AN INNOCENT MAN TO DEATH

Unlike the animal, the innocent man is possessed of reason, and unlike the criminal, he retains all the privileges of a rational being, not having forfeited them by violating some precept of reason. The innocent man, therefore, is in a position the exact opposite of the world of animals, and must be regarded and treated as such. The animal is not possessed of rights, the innocent man has rights which cannot be violated without sin, and one of his first and most fundamental rights is that *he be not used as mere means to any other person or to society.* Having the same natural faculties as other men, he has the same final end, since it is from the natural faculties which a thing possesses that we determine its natural end. Having the same end then as other men and as society itself,* an end, as we saw, which is beyond all individuals and beyond society, the individual man cannot be treated as mere means to other men or to society. "Being furnished," writes Locke,† "with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses as the inferior ranks of creatures are for ours." But to kill or injure a man is to subject him to yourself, to treat him as means to your own interest, complacency, or purpose, and is unlawful.

Again, the innocent man is a person, self-directive, *sui juris, propter seipsum existens,* and not a mere instrument in the control of another. He cannot, therefore, be treated as a mere *thing* to be handled as society desires.

Finally, the only reason why it is competent for society to put a man to death is that such a one is evil and corruptive of the whole to which he belongs. But

* Vol. I. p. 334.
† Second of the Treatises on Government, ch. 2.

the innocent man, no matter what may be his *physical* defects, and even though these physical defects are a menace to society, is, in the rational and human order, the order which makes society what it is and gives it its authority and its meaning, to be regarded as good and sound, and, therefore, society has no authority to put him to death. "The slaying of the sinner," writes St. Thomas,* "becomes lawful in reference to the good of the community that is destroyed by sin. On the other hand the life of the just makes for the preservation and promotion of the community, seeing that they are the worthier part of the people. And, therefore, it is in no wise lawful to kill the innocent."

3. ON KILLING IN SELF-DEFENCE

Our present question concerns the killing of an unjust aggressor, of one who without rightful authorisation makes an attempt on another's life. May I kill an unjust aggressor in self-defence?

We answer—it is never lawful for a private person *directly* † to aim at the death of another, whether as an end in itself or as a means to some good. No private individual has authority over the life of another person, and, therefore, to aim *directly* at encompassing the death of another is a grave crime. It is wrong to aim at the death of another as an end in itself, because it is wrong for the will to desire as an end what is intrinsically against natural law: and it is wrong to aim at it as a means, because, no matter how laudatory the end may be, it cannot justify a means which is essentially a violation of the law. Even, therefore, though our life is being assailed by another person unjustly it would be wrong to aim *directly* at the death of the aggressor as a *means* to preserving our own life. An act, as we

* "S. Theol.," II. II^{æ}., LXIV. 6

† Our doctrine here is expressly opposed to that of Card. de Lugo ("De Just. et Jure," X. VI. 149) who maintains that if the death of the aggressor were necessary in order to save one's own life his death could be willed *directly*.

said, which is essentially and intrinsically wrong cannot be willed even as a means to saving our own life.

It will be said—but does not the man who unjustly makes an attempt on the life of another forfeit his life to that other—does he not place his own life at the disposal of the person whom he attacks, and, therefore, may the person attacked not aim at the death of the aggressor? Our reply is that no man is empowered to forfeit his life to another, to place it at his disposal. No man has such a right over his own life as that he can take it away: and, therefore, he cannot confer this right on another. We cannot, therefore, aim *directly* * at the death even of an unjust aggressor.

But though it is not lawful to aim *directly* at the death of an unjust aggressor, it is lawful to encompass his death indirectly, *i.e.* whilst not aiming at his death, to do an act which secures my own life, but from which his death follows as a consequence.

The reader is already familiar with the problem whether it is ever lawful to cause evil indirectly. In an early chapter of this work it was seen that it is lawful to do an act from which two sets of consequences follow, one good and one bad, provided the bad consequences are not directly intended or desired.† Thus it is lawful for a man to invent or set up a new machine even though some may lose their employment as a consequence. It is lawful to set up a rival business even though grave losses must be sustained by other firms.

Now the killing which is done in self-defence is indirect only, and, therefore, it is not unlawful. The moral character of an act, says St. Thomas, is determined by the object aimed at ‡ and not by something which is

* The reader should realise fully that one is said to aim directly at an object, not only when he desires it as an end for its own sake, but also when he desires it as a means. If I kill a man in order to get money, the killing is no less direct than when I kill for the sake of killing.

† See Vol I., ch. 2. There are other conditions necessary also; they will be enumerated, p. 101.

‡ Either as end or as means.

beside one's intention. But in self-defence we aim at one thing only, viz. preserving our own life, and, as means to this, *stopping the charge* which is being made upon us. That end and that means being legitimate our act is legitimate. It is not rendered unlawful by the fact that as a consequence of our action the aggressor meets with his death.

The central and essential proof of the lawfulness of killing in self-defence consists in showing that such killing is indirect only, that the death of the aggressor is not aimed at, but is beside the intention of the agent. The death of the aggressor which occurs in self-defence is aimed at neither as end nor as means, and there is no other way in which a thing can be aimed at or directly intended. It is not desired as an *end*, for in itself the death of the aggressor is regarded as a grave misfortune. What is aimed at as an end is the preservation of our own life. The death of the aggressor is not aimed at as a *means* to preserving our life, for the means by which we secure this end is *effectively stopping the movement directed against us*, or *producing quiescence in the aggressor*. This is all that could ever be necessary to put an end to the aggression and to save the life of the person attacked. *Death as such* * could never be necessary. Let quiescence be secured, and the attack must of necessity come to a close. The death of the aggressor, therefore, is not intended as a means.

It will be said—but is not the death of the aggressor the means chosen to produce this quiescence and, therefore, it is not willed directly as a means? We answer—the death of the aggressor is not the means chosen for this end. The means chosen consists of a thrust or a

* In this fact we have an additional proof that the direct killing of the aggressor is never lawful. Card. de Lugo maintained that if the death of the aggressor were *necessary* in order to save one's life it would be lawful to aim at his death directly. But as a matter of fact, *death as such*, never is necessary. Quiescence being once secured the attack of necessity ceases. And, therefore, it is not lawful to aim at more than this.

wound or a series of wounds. It is upon the use of these means that paralysis of movement occurs. If death were the means adopted to produce quiescence it should precede this latter condition, whereas in practically every case quiescence is produced and the aggression ended before death occurs: if death were the means chosen to produce quiescence it would be desired by the agent, whereas after the blow is delivered the agent takes and is supposed to take every possible means to prevent the occurrence of death: if death were the means used in self-defence it should normally occur where the defence is successful, since normally the end aimed at is only secured by the actual realisation of the means chosen to secure it. The occurrence of an end in any other way is accidental and, therefore, rare and abnormal. On the other hand in point of fact the condition of immobility or powerlessness to strike is as often followed by recovery as by death.

What is evident, therefore, is that in self-defence the only means chosen and the only means necessary is the stopping of the unjust aggression. The death of the aggressor is not aimed at and is not a necessary means of self-defence. When death occurs it is caused by us indirectly only and cannot be helped.

The death of the aggressor, therefore, in no way enters into the series of means and ends that make up the intention of one acting in defence of his life. The order of aims in such a case is the following: to strike or wound the aggressor, in order to stop his charge, and to save one's own life. If as a result of the blow or wound delivered, the death of the aggressor should follow as well as paralysis of movement, the former consequence is quite beside the intention of the agent; it in no wise enters into his aims either as means or as end; it is caused by the agent indirectly only.

In regard to killing in self-defence, therefore, the only moral problem that legitimately arises is the problem that we have already fully considered—the problem

of the lawfulness of causing evil indirectly, the problem of the double effect. We saw in an earlier chapter* that it is lawful to do an act which is followed by two effects, one good and one bad, when only the good effect is directly desired, when the bad effect is not the means whereby the good is attained, and where the good effect is of sufficient gravity and importance. In the act of self-defence these three conditions are fulfilled and, therefore, self-defence, even if it should involve the death of the aggressor, is a lawful act.

From what precedes it is easy to gather the conditions necessary for a blameless defence. First, the death of the aggressor must not itself be made an object of pleasure or be willed in itself; secondly, the defence must occur during or in the act of aggression (in ipso actu aggressionis) else it would be more than the stoppage of a charge; † thirdly, not more violence should be used than is required to stop the attack; if more violence is used than is necessary, our act is more than one of

* Vol. I. p. 39.

† A difficult question arises here. When may the aggression be regarded as begun, and, therefore, when may a man begin his act of defence? Card. de Lugo maintains that an act of aggression has begun as soon as a man makes up his mind to kill, so that if the presence of such intention were made certain the other party could immediately begin his defence; and, if no other way of escape were open, could kill the aggressor. We have no difficulty, however, in rejecting his opinion. Aggression is a menace to my life only in so far as it is external, and, therefore, it is only when the act of aggression has taken external form, *i.e.* has begun as an external act, that defence proper becomes possible. You could not speak of defence against a mere internal act.

But, on the other hand, to say when the external act of aggression has begun is no easy matter. It is certain that a man need not wait for his opponent to shoot in order to begin to set up his defence His defence may certainly begin as soon as the aggressor lifts his gun or even approaches to the fray. It is begun, whenever any act is done which, in the common estimate of men, would be regarded as forming part of the aggression. Some acts though they are meant to lead on to aggression could hardly be regarded as part of the aggression; rather they are acts preparatory to aggression, *e.g.* the purchase of arms for the purpose of aggression. Such acts, we think, could not be regarded as setting up a right of immediate defence. In all such cases, of course, there is room for very great differences of opinion since it is not easy to say when an external act is only a means preparatory to aggression, and when it is a part of the aggression. But

defence, it is a new aggression; perhaps we may add a fourth condition for clearness sake—the act directed against us should be strictly one of *aggression*.* I cannot kill a diseased man simply because of the danger, that, if he lives, I or others shall die.† His condition does not make him an aggressor on others' lives. These are the conditions required for the moderation of a blameless defence.

It needs only to be mentioned here that just as it is lawful to kill a man in defence of one's own life so it is lawful to kill in defence of any very great good. But again the act done must be strictly one of defence against attack. It would be lawful to kill a man who attempts to steal a large quantity of money, provided that killing is the only way in which the robbery can be prevented. A woman may kill in defence of her honour,‡ for violence may be met with violence. But in all cases where the good to be defended is not one's own life, but only property or something of the kind, a condition § must be added to those already mentioned as ensuring a

we believe that our two general claims hold good, first, that the mere intention to attack is not an act of aggression such as would justify killing in self-defence; and, secondly, that before our attitude could be construed as one of defence in the proper sense of the term, it should concern an act which is in some way a part of the aggression, and not an act which is merely preparatory to aggression.

* *i.e.*, purposeful aggression—whether free or not free it does not matter. I may kill a madman who attempts my life just as freely as I can kill a sane man.

† Craniotomists sometimes forget this condition. The child about to die is in no sense an aggressor on its mother's life. In justification for this terrible crime it has been sometimes alleged that the child is an aggressor. He is not an aggressor. If it is lawful to kill the child, it is lawful to kill the diseased man in the case given above.

‡ She could not commit *suicide* to prevent dishonour. Suicide is not defence. Suicide would be choosing an evil means though to a good end (See "S. Theol.," II. II^ae., LXIV. 5, *ad* 3). But a woman might *risk* her life to save her honour. If there was no other way of escape she might even plunge into a river, not that *by dying* she might escape, but hoping that the angels might bear her up, or that some friend might happen to come nigh and save her from death.

§ The required proportion was of course assumed when there was question of aggression against one's life. One life is always proportionate to another.

blameless defence, viz. there must be some proportion obtaining between the good which is being saved and the death of a human being. A rich man may not kill in defence of a few shillings.

4. ON ACCIDENTAL KILLING

The question whether a man who kills another accidentally should be held guilty of homicide is to be solved by means of principles that have been fully explained in another part of this work.* If what is done is *purely* accidental, *i.e.* if it was in no way foreseen, or, being foreseen, could not be avoided, then no responsibility is incurred. If our act is free, and if the consequences are foreseen,† in at least some confused way, then responsibility is incurred, and if the consequence happens to be the death of another person, we are guilty of homicide in the sense that we are the cause of his death.‡

* Vol. I. p. 33. St. Thomas (II. II^ae., LXIV. 8) explains that the guilt of wilful homicide attaching to the case of indirect killing arises generally in two ways, either through wilful negligence, or because the act that is done is in itself illicit. The latter part of this statement requires to be modified to some extent Even when the act that is done is illicit, a man could not be held responsible for the death that his act causes unless the result is foreseen at least in some confused way. A trespasser on another's land might happen to knock against the owner in the dark, and cause him to stumble and fall; yet, even if death ensued, the trespasser could scarcely be held guilty of homicide. The result could not have been foreseen in any way. Perhaps, indeed, we might say that so remote is the connection between mere trespassing and such an occurrence, that the result is to be ascribed not to the act that is done, but to the circumstances, as its cause; whereas the effects that here concern us are those that our act causes For an interesting case at law see Pollock, "Law of Torts," p. 48 (8th ed.).

† Obviously killing in self-defence is an instance of accidental killing in this sense. It differs from other cases of accidental killing only in the fact that in self-defence we intend violence, *i.e* such violence as is required for defence. In other cases no violence is intended. But in defence, though violence is intended, the death of the aggressor is not intended. It is only his *death* which is accidental.

‡ *i.e.* provided the death is *really* the consequence of our act. Sometimes, as we have just said, the connection is so remote and the number of circumstances that have to intervene before the result occurs is so great that it could not seriously be maintained that death is really an effect of our act.

But the additional question arises—granted that the consequence is foreseen and that our act is free, are we always guilty of *sin* on account of the consequences that occur, or is the act which is attended by such foreseen consequences, ever justifiable? We answer—an act which, it is foreseen, will be attended by evil consèquences, even that of the death of some innocent person, is sometimes justifiable. But to be justifiable four conditions must be fulfilled, (*a*) the act that we do must be in itself indifferent, *i.e.* not illicit; (*b*) the death which occurs must not be desired on its own account; (*c*) our act must be attended by some overwhelming good, sufficient to justify us in incurring responsibility for such a terrible consequence as that of death; (*d*) the death that occurs must not itself be the means chosen for securing that good. These conditions have so often been explained in the present work that it will not be necessary to repeat our explanation here. The difficulties that arise in the moral and natural law generally concern the third of these conditions. It is obvious that the man who for mere fun fires a gun in a crowded street, even though he does not wish to kill anybody, is guilty of the grave crime of homicide, should anybody be shot. There is no justifying reason for such an act. On the other hand, the motorist who is hotly pursued by enemies intent on murdering him, and who suddenly sees a child before him in the narrow street, is not obliged to stop, and if the child should be killed he is not to be accounted guilty of sin. Though there is homicide, it is justifiable. The fugitive had a right to escape, his act was, therefore, indifferent in itself, it was in itself not illicit, and the good which was at stake (viz. his own life) was of sufficient gravity, even in comparison with the child's death, to justify his use of his own right, even though attended by such a painful consequence.

In foro externo. Judges of the external court are often confronted with a difficulty which does not exist for the moralist, that, viz. of determining whether or not the evil

consequences of a man's action were or were not foreseen.* The moralist determines the amount of guilt which is incurred *if* the consequences were foreseen. For the external courts a much more important question often is—*whether* they were foreseen. So far, at all events, as those consequences are concerned which occur as a result of wilful negligence, the following practical test is availed of universally in England. A man is held to foresee at least the *natural* and *immediate* consequences of his act, and to be responsible for such consequences. Now common sense will often tell us the consequences that ought to be considered as natural and immediate. They are those, for instance, that are of the same nature as the act that causes them, *e.g.* a blow followed by death, or they are those that normally accompany the act. But there will be many cases where the naturalness and immediateness of the consequences are far from obvious, and hence a more practical working rule for judging of the foreseen consequences is desiderated. Such a rule is afforded by a supposed appeal to the distinctively prudent and reasonable man. Any consequence is supposed to be foreseen which a prudent and reasonable man would have foreseen in the circumstances. But the prudent and reasonable man is, like the "economic" man, hard to find or identify. And hence we are provided with another rule—the Englishman's final test of what was and was not foreseen: a man is presumed to have foreseen such consequences as a jury of twelve of his countrymen considers that he ought to have foreseen.

5. ON DUELLING

The time-worn problem of the morality of duelling need not detain us long.† Duelling is "a meeting of two parties by private agreement to fight with weapons in themselves deadly." ‡

The meeting must be by private agreement. A chance encounter between two or more people is not a duel even

* If it is evident that the evil consequences were foreseen then a man is held guilty of those consequences no matter whether they were natural and immediate or not. See Pollock, "Law of Torts," p. 40 (8th ed.).

† Being almost unknown at present in English-speaking countries it is not to be regarded as of sufficient practical importance to necessitate any kind of lengthy discussion in a work like the present.

‡ This excellent definition is taken from Fr. Rickaby.

hough, *having met*, formal arrangements are made about he encounter. The two parties must meet to fight, and ›y agreement.

Their agreement must be private. A fight arranged ›etween representatives of different nations by public ıuthority would not be a duel proper. Such a fight night be even regarded as a war in miniature.

The fight must be with weapons in themselves leadly, *i.e.* with weapons designed to kill. A pre-ırranged encounter with fists and "knuckle-dusters" ›r even with bludgeons would not be accounted a duel. It must be with swords or pistols or some other weapons, the admitted function of which is to kill.

The evil of duelling is two-fold. First, a man *directly* wills to kill another; secondly, he wills *directly* to risk his own life. On the first count, the immorality of duelling should be obvious to all. The duellist desires to kill his opponent. If he does not, if he determines, *e.g.* to fire into the air, then the fight is not a duel but the semblance of a duel, whereas the question now under discussion is that of a genuine duel. And even if the duel takes place in the dark, neither party seeing the other, still the will of each is to kill the other. Else why do they fire? In a duel, therefore, the direct intention is to kill. Nor can it be said that in the duel each party is acting in self-defence against an unjust aggressor. For, first, the attack is one that each consents to, and, therefore, it is not of the nature of an aggression, and particularly an unjust aggression (which is always contrary to one's will) but rather of an invited or at least authorised attack. Secondly, defence against aggression allows the use of no more violence than what is necessary to stop the aggression and save one's life. To use more violence than this, is, as we saw, not mere defence but an additional aggression. Now, both the challenger to the duel, and he who accepts the challenge can escape death without the use of violence of any kind, the one by not challenging, the other by declining

the challenge. Duelling, therefore, is not to be inte preted as a mere act of defence against unjust aggressio

Secondly, in the duel one risks directly his own lif Now it will at once occur to the reader that it is n always wrong to risk one's life. The acrobat and t Alpine climber risk their lives, admittedly without si Why then should the risk run in the duel be regard as intrinsically wrong? The answer is, *first*, in the du we ourselves not only run the risk but also provide by authorising the attack which is made upon our live Whatever guilt, therefore, is incurred by my oppone is incurred by me also, differences of course being allow for our respective positions. My opponent's act is o of attempted homicide. The authorising of such an a is in the nature of attempted suicide,* for a man commi suicide not only when he shoots himself but also wh he induces or authorises another to shoot him. *Second* an acrobat is supposed to render the risk remote. T danger would be for other people not for him. A acrobat by previous study and practice takes eve means to render the risk remote, and he takes all p cautions against what risk remains. If his performanc are in mid air, he spreads a net to save him in case fall. If he does not it is because he regards hims as sufficiently dexterous to dispense with the net.† duelling, no precaution is taken, no coat of mail is wo no attempt is made to render the risk remote. O may prepare and practice, but the risk can never eliminated. If it were there would be no glory in t duel. The glory and the profits attaching to the acroba

* This element of guilt is quite distinct from the sin of co-operat in another's sin, viz. murder, an element which also is present in duel.

† If the danger were not rendered in some degree remote an acrol would also sin by exposing his life to danger. His position is qu different from that of a soldier on the battlefield. The soldier wis to save his country. He does not directly will the risk. The acrol directly wills the risk. Therefore, unless it can for him be m remote, whilst for other people it would be proximate, his act sinful.

feats arise out of the art whereby he has eliminated risk from an act which to all other men would involve not only danger of death but actual death; the duellist, on the other hand, seeks to vindicate his honour by *submitting* his life to danger and not guarding against it. It is, therefore, supposed to be present and real.

Duelling, therefore, involves two evils, that of an unjustifiable and unwarranted attack on the life of another person, and that of submitting one's own life, without just cause, to danger, a danger also which is authorised and arranged by one's self. In both these aspects duelling is intrinsically wrong, and being intrinsically wrong, it cannot be justified under any circumstances.

And what we have said of duelling proper, which essentially consists in the danger to life involved, holds true also of those lesser duels, or duels improperly so called, where injury is caused, but where danger to life itself is not involved. We speak here of those arranged encounters (particularly amongst students) where deadly weapons are used, but used under such restrictions that death can scarcely occur. Such encounters are intrinsically wrong. For the same law that forbids the killing of others, or of one's self, forbids also the doing of grave bodily injury to another or to one's self, and the aim of these encounters is the infliction of grave bodily injury.

NOTE.—In these latter encounters there is often a want of proportion between the offence and its effect. The offence given is often of the most trivial kind. Indeed, these lighter duels are a great mark of childishness in the nation that encourages them. They are indications of a character that cannot bear the slightest affront. How different from the character of the magnanimous man!

The motives of the duel are generally, on the part of the challenger, *satisfaction*, and on the part of him who accepts, *the defence of his honour*. Neither purpose suffices to justify the duel, which, as we saw, is intrinsically wrong, so that no purpose could justify it. *Satisfaction* seems to be

peculiarly inappropriate for serving as a defence of duellin Satisfaction for an affront consists in an apology, or r tractation, or amends of some kind. The man who accep a duel makes no apology or amends. On the contrar in addition to insulting you, he attempts to take your li and at your invitation. Again, the affront offered wou be much more gravely atoned for if, instead of a duel, t State were to take up one's case and declare the affro an insult not only against the party directly affected b against the whole of society. And such is the motive public punishment. Punishment is inflicted on account the element of private and public injury present in ea crime. Therefore, even if duelling were of the nature atonement or satisfaction (as we have seen it is not), it wou atone for only part of the guilt attaching to insult, and th the least part, viz. injury to one's self. The hard case that of the man who is *challenged to a duel.* If he declin he is dishonoured and perhaps loses his position and mea of livelihood. However, such dishonour and loss are simp to be accounted one of the penalties of goodness in an e world. The duel is, as we have seen, intrinsically wror and a man is no more entitled to accept the challenge to duel in order to maintain his position, than he would entitled to steal or to do some disgraceful act, were m found savage enough to dishonour one for being good.

6. ON PERSONAL LIBERTY

We speak here of the restraint of personal or bod liberty only, such as incarceration, or tying up a mai limbs, or holding him down. No private person c deprive another of his personal liberty except unc very special circumstances. To do so is to *subject* man to yourself, to use him as *means*, whereas, as me men, as private persons, men are not to be regarded means to one another,* as we have already prove The same law which gives a man a right to his life, a to bodily integrity, gives him a right to freedom bodily movement also. These are the privileges a rights of personality. And, therefore, it is unlawful restrain liberty.

* See p. 82.

The special circumstances above referred to, arise in the actual commission of evil. We saw before * that a man by doing evil withdraws himself from the order of reason and thereby loses the privileges attaching to rational nature. It is, therefore, in the competence of the public authorities to punish crime with imprisonment, and it is in the competence even of any private man to restrain any other that is attempting to do evil, attempting, *e.g.* to kill another or himself. But such restraint can only be checked momentarily. It would not be lawful for a private individual to keep another for a long time in custody, lest he might do evil. By doing so we would also prevent the doing of good. Only the public authority can restrain the liberty of another for a protracted period and only for the commission of crime.

On Injuries to Honour, Reputation and Friendship

Under this heading we have to consider three kinds of injury (*a*) insult and contumely; (*b*) detraction and calumny; (*c*) mischief making. These are all sins which are effected by words, or by acts which have the force of words.

(*a*) *Contumely* means throwing a man's faults in his face in order to detract from his dignity. Every person, as a person, has a right to respect because of the dignity attaching to human nature. To throw one's faults in one's face is to violate one's dignity. Its aim is to pull a man down both in his own estimation and in that of others.

Contumely, however, is evil whether it takes place in the presence of others or does not, for every man is lowered by abuse whether others are listening or not. The guilt of contumely is only *increased* when it takes place in the presence of others.

* See p. 94.

Contumely and insult proper suppose the presence of the person affected. A man may suffer in reputation but he suffers no indignity from abuse delivered in his absence.

Essentially distinct from abuse and contumely is the raking up of a man's faults to himself for purposes of correction. Again, what is usually spoken of as bantering is not to be confounded with contumely. For the aim of bantering, even though it consists in raking up the faults of another in his presence, is not to dishonour or sadden, but rather to amuse, and as such it even belongs to a special virtue.* But bantering may easily turn to sin through want of care and feeling. "If," says St. Thomas, "one shrinks not from aggrieving him at whom he directs his wit, provided only he can raise a laugh—that is vicious."

(*b*) *Detraction.* As contumely is directed to the lowering of one's honour, so detraction aims at the destruction of one's reputation. Reputation means the good opinion which other people have of us. It is a genuine human good, higher even than lands or money. And just as it is wrong to steal a man's property so also it is wrong to injure a person's reputation or good name.

Detraction takes place in the absence of the person maligned. It requires the presence of other people. Also it regards only those evils which are to some extent private. When a crime has already become public there is no reputation left to filch away.

Detraction is sinful whether the story narrated is true or false.† For in both cases a man is deprived of the favourable opinion of others, which is a true good, a valued possession. It may be argued that when a man commits a crime, and still retains a good reputation, he is in possession of a "good" to which he has no right, and that, therefore, there can be no injustice in depriving him of his reputation. We answer—a man has a right

* Vol. I. p. 577.
† The second case is spoken of as calumny.

to a good reputation as long as he can keep it, just as he has a right to keep money as long as others are willing to leave it with him. A person who possesses money may be deprived of it in one case only, viz. where the keeping of it involves injustice to some one else. A good reputation involves no injustice to anybody, and, therefore, as long as it is possessed a man may not be deprived of it.

Analogous to detraction, or rather calumny, is the sin of rash judgment—also a crime against justice. As I may not create a wrong and unfavourable judgment in the mind of another about any man, so I may not wilfully set up or allow to be set up a wrong judgment in my own mind, for a man's right to his reputation extends to the good opinion of all. Given, however, good and solid grounds it is each one's right to form his own judgment about the character of his neighbour.

(*c*) *Mischief-making* is directed to the sundering of *friends*. It consists in the narration of things which are not necessarily bad taken in themselves, but which are bad at least in the sense that they repel a friend. It is a graver sin than detraction because it deprives one of a good which is of greater worth than a good name—a man's reputation is principally of value to him as a means to friendship. It is also a graver sin than contumely or dishonour because the friendship of others is a greater possession than their mere respect.*

We now proceed to treat of problems of justice in regard to material goods or property.

* St. Thomas also speaks of *derision*, in which a joke is made of the defects of others, not to dishonour or malign them, but in order to put them to the blush. It can become a very grave sin, particularly when accompanied by contempt.

CHAPTER IV

ON PRIVATE OWNERSHIP AND ON COMMUNISM

DEFINITION

By ownership is meant the permanent and exclusive right of retaining, controlling, and disposing of an object in one's own interest and according to one's own wishes. From this definition it will be seen that ownership is characterised by four things—the right of control, of control in one's own interest, permanence of control, and exclusiveness. The right to control, and to control in one's own interest we may regard as in a certain sense the substance of ownership; permanence and exclusiveness are inseparable properties.

Ownership confers an unlimited right of control, a right to dispose of an object in any way one pleases. Where an owner's right of control and use is limited, the limitations imposed on him are imposed not by ownership itself, but by civil law or by some one of the many moral virtues that affect and direct human action, such as charity and friendship. For instance, a man ought to support his wife and children, and some of his property ought to be devoted to this purpose. But ownership regarded in itself carries with it a full right of control and use.*

Secondly, the right of control attaching to ownership is exercisable in one's own interest. Trusteeship gives a right of control, but in the interest of another only.

Thirdly, the control attaching to ownership is permanent. We do, indeed, speak of certain transitory

* In so far as control and use are possible. The natural qualities of things are largely independent of human control.

rights such as right for a year, or life interests as rights of ownership. But ownership in its full and complete sense is a right of permanent control—a right not limited as to time.*

Ownership is also *exclusive*, i.e. it confers the right to reserve property for one's own use, and to exclude all others from its use. This is, indeed, the principal attribute of ownership, the element most prominent in the public consciousness in regard to ownership. It is of course possible for two or three persons to own a thing in common. In that case there is really only one owner, viz. the group of two or three, and their ownership is exclusive of everybody else. A thing over which everybody had equal rights could not be said to be owned in any sense.

DIVISIONS OF OWNERSHIP

Ownership is distinguished into *public* and *private*, according as a thing is owned, on the one hand, by the community (*i.e.* the State or a municipality, or some other public body) or, on the other hand, by a private individual or body of individuals.

Again, ownership is divided into *perfect* and *imperfect* according as the owner has the right of disposal not only of the thing itself in substance but also of its uses, or possesses control of one of these alone. Where control extends to the substance of the thing alone it

* It is important to remember that in the present work we shall take no account of part-ownerships or mere "uses," for instance, yearly tenures, rights of way, mortgages, "estates." These are all of extreme importance in civil law; but the consideration of them would be out of place in our present discussion, the aim of which is merely to defend the existence of a right of private ownership.

Interesting attempts to save the conception of ownership as the right of unlimited control, whils allowing for the detachment from property of certain "uses," are sometimes attempted in legal treatises. Markby, for instance, defines an owner ("Elements of Law," p. 159) as "a person whose rights over a thing are only limited by the rights which have been detached from it." A somewhat similar definition is given by Austin.

is spoken of as *direct*, where to the uses or utilities of a thing alone it is spoken of as *indirect*.

As already explained we shall in our present work take account of perfect or complete ownership only. Also, as the heading to our chapter indicates, we are concerned here with private ownership and not with public, the reason being that private ownership is the only kind that has ever been called in question by any thinker or writer. Even the most uncompromising communist will allow that if an object may not be owned by private individuals at least it may be owned by the public at large. What we are concerned to show in the present chapter is that property may be owned by individuals also. Our thesis is that private ownership is a requirement of natural law.

Our discussion on this subject will consist of two parts. We must first explain the reason why private ownership *as a system* is necessary, why private ownership exists and is required at all: secondly, we must show how private ownership arises *in particular cases* or the various ways in which men come to be legitimately possessed of property. The first is a discussion on the *grounds* of private ownership, the second concerns the *titles* of private ownership.

The Grounds of Private Ownership

As already explained, we are concerned in the first part of this chapter with the reasons of private ownership as a system. We are to show, not how *a* or *b* comes to be possessed of his property, but why the system of private property exists at all.* Now before giving the *reasons* or *grounds* of private property as a system, it will be necessary to make a few preliminary remarks on the exact scope of the question under discussion.

* The *titles* by which individual men become owners of property are sometimes spoken of as the *proximate grounds* of property, the *reasons* which justify the system of private ownership (referred to here as the grounds of property) being the *remote* grounds.

In the first place we are not here concerned with the special question of the right of private ownership in land, machinery, warehouses, mines, steamboats, or any other of those things usually referred to as sources of wealth, or capital. The question of capital or the sources of wealth will be discussed in some later chapters of this volume. At present we are concerned with the simple, and most general question whether there exists a right of private ownership in regard to any kind of wealth. In other words, our discussion in the present chapter is with the *communists* who deny to individuals the right of appropriating any kind of property whatsoever, not with the *socialists* whose strictures in regard to property are confined to capital or the sources of wealth alone, which, they say, should be owned only by the community as a whole, but who allow a right of private property in other things such as wheat, clothing, one's own house and furniture—everything, in fact, which is not productive of further wealth. The theory of communism has, indeed, few adherents now-a-days, for which reason it need not take up so much of our attention as socialism—a question of very great and universal interest. Nevertheless communism attacks a more fundamental right than socialism since it disallows mens' right to own any kind of property whatsoever; and, therefore, it will be necessary before treating of socialism to examine the communist position and to establish the right of private ownership in regard to property taken generally.

Secondly, the only kind of ownership that is here considered is ownership in regard to stable, permanent, or lasting property, *i.e.* the gathering together of wealth in the form of money or houses or commodities as security against the uncertain future. For even the most extreme communist will admit that a man may own the food he is going to eat, the clothes on his back and any thing else that is required for immediate use. What communists will not allow is the accumulation

of " riches " in large measure or small, or what we have called stable property.

Thirdly, though we defend the right of private ownership, we admit the right of public ownership also. In every civilised country the State as well as the private individual has its lands, houses, and other kinds of property. Our only contention here is that private property is necessary. How far State ownership should be allowed to encroach on the system of private ownership is a question which we shall be in a better position to consider when treating of socialism.*

Fourthly, and to this preliminary observation we invite the reader's earnest attention, in claiming that private ownership is of natural law, we do not contend that nature has herself made distribution of her goods, assigning one part to one individual, another to another. On the contrary, were it not for the intervention of human reason, the goods of nature would have remained always common—*negatively common*, in the sense that they would never be taken into private hands and used as private property. But though nature herself makes no particular distribution of her goods her clear intention is that her stores of wealth should be utilised, and utilised also to the best advantage, for which end it is necessary that they should be taken into private hands and used, as we shall presently proceed to show, as private property. All this St. Thomas clearly explains when he says " community of goods is set down as a part of the natural law, not as though it were a dictate of natural law that things should be possessed in common, and that there should be no private property, but because the marking off of separate possessions is not done by nature herself but rather according to human convention." The theory which we here oppose is the theory that the goods of nature are *positively* common, viz. that there is a dictate of nature and natural reason

* See p. 275.

enjoining common ownership and forbidding private ownership. This is the chief tenet of the communists.

Lastly, when we say that private property is necessary we do not mean that it is so indispensable that under no conditions could common ownership be set up amongst men, or that without private property the race should forthwith disappear. Without private property a small group of savages, for instance, might get on very well—for savages. Without private property, again, *a small group of very perfect men* not given to laziness, or jealousy, or unfriendliness, or contentiousness, or subject to any of the weaknesses of human nature, might attain even to a very high degree of human excellence. Our present contention is that for a large community like a State, and particularly a State made up of actual men, men as we know them, in whom good and evil will always be mingled together, private property is necessary, so that without it welfare and development are impossible.

These preliminary explanations being made we are now in a position to establish our fundamental thesis on the right of private property, which is as follows:—*

Private ownership is a requirement of natural law, and the entire prohibition of private ownership is unjustifiable in natural law.

We shall here attempt to establish the necessity of private ownership first, in connection with the individual interest; secondly, with that of the family; thirdly, with the well-being of the race.

(*a*) THE INDIVIDUAL INTEREST

(1) The individual is naturally prior to the community and to the State—prior logically, since individuals

* We are here dealing with a right that is almost axiomatic and self-evident, a right that is hardly disputed by any person. This general acceptance fortunately relieves us from the necessity of such a detailed and lengthy argument as is required to establish the right of private *capital*, our discussion in regard to which extends to several chapters of the present volume.

are the elements which constitute society, and prior historically, since individuals precede the State in time. Now, long before the State came into being, individual men had by their labour acquired property of various kinds. It was their right to do so there being no law to prevent them, and it was necessary to do so, first, for their own protection, and secondly, in the interest of the world at large: for if men could not own the things they produced nothing would be produced. The system of private ownership was, therefore, fully established before the State came into being, and consequently the State has no right to abolish it under any circumstances. It also preceded all possible forms of common ownership and, therefore, it is more in accordance with nature's design than common ownership. The system of private ownership is as primary and fundamental in the economical life of man, as the individual is in his social life.

(2) The prohibition of private property is a grave injustice to the individual since it opposes the most fundamental rights of the individual; (α) his right to individual development; (β) his right to happiness; (γ) his right to the products of his own labour.

(α) Development consists in the fullest exercise of a man's capacities and faculties about their best objects. And since the individual has received his capacities from nature he has a full right to their free and fullest exercise. Now private property is an essential condition of the full and perfect use of our individual capacities, and, therefore, of development. If no man may possess property as his own, such as land, or houses, or a business, or at least the money that he earns by his work, there is nothing to induce him to exercise his capacities in regard to external things. On the contrary, by forbidding private property, the State sets up the most effective of all prohibitions against their exercise. But let a right of private property be granted, and at once the faculties of man, physical and mental, awaken into life,

and their complete and perfect exercise is not only rendered possible but favoured and ensured. A general system of private property is as necessary to the exercise of the individual faculties and to individual development as air is to life, and, therefore, to abolish and prohibit the system of private possessions would be in effect to hinder and suppress individual development. "Man," says Rousseau, "is born free but is everywhere in chains." This he regards as chiefly attributable to private property. As a matter of fact it is the forbidding of private property that forms the most effective of all weapons for repressing human development and human freedom.

(β) Private property is necessary for the happiness and welfare of the individual. There are men who are capable of a certain amount of happiness though possessed of nothing but the coat on their backs and food sufficient for the day. But then there are men whom not even the loss of an eye or a limb would render unhappy; but surely eyes and limbs are normally necessary for individual happiness and welfare. In general, however, it cannot be denied that external possessions are an important source of happiness to the individual man, and, therefore, the absence of external possessions must represent a corresponding and proportionate privation.

But a law prescribing the total abolition of private property would be more than a privation. It would be the cause of immense positive misery to every person.* To feel that one is gifted by nature with capacities for creating and amassing wealth without injury to others, and yet to be prevented by public law from doing so, would be a source of the deepest vexation and mortification to any ordinary man. To know that one has within him powers more than sufficient to render him independent of others, and yet to be compelled to eat

* Even to those who in the absence of such prohibition do not feel the want of property.

at the public tables, and to depend on the State for every necessary of life, would in most men awaken the keenest resentment and irritation. And this feeling of dependence on the good will of others must grow more acute and oppressive as old age approaches, when labour becomes impossible, and no other security against neglect and poverty is possible except the security of a store of wealth. The thought of an old age entirely dependent on the charity or the good will of others would, to most men, be a source of grave anxiety all through their lives. For these reasons it is obvious that the abolition of private property is opposed to the happiness and welfare of the individual man.

(γ) But our chief argument concerns the right of a man to the products of his own energies and labour. The individual has from nature an unquestioned right of property in his own person, his own powers and energies. And having a right of property in his own energies he has also a right of property in the products of those energies, since the products of a man's energies are nothing more than his energies transformed. But the products of our energies for the most part consist of external goods and, therefore, the individual has a right of property in external goods.

We go farther and claim that since the present wealth of the world is almost wholly a result of human labour, mental and physical, by natural law the greater part of the wealth of the world should lie in private individual hands, all labour being essentially the labour of individual men. "There were plants of corn and wine in small quantity," writes Hobbes, "dispersed in the fields and woods before man . . . planted them apart in fields and vineyards." But it is human labour that has produced out of these few plants provided by nature the present teeming harvests of the world. Individuals have, therefore, a right of private property to most of the wealth of the world.

It may be said, however, that the State has a right

to interfere with the individual interest where that interest is supposed to be in conflict with the interest of the family and the race. In the following sections we go on to show that private property is even more necessary in the interest of the family and the race than in that of the individual.

(*b*) THE FAMILY WELFARE

Our proof that private property is necessary in the family interest is two-fold. First, we shall show that men have not only a right but a duty to provide for their families, and that this can only be done by the acquiring of private property. Secondly, in a country in which private property is forbidden, the family is in grave danger of losing its independence and of being interfered with in its most sacred relations by the public authorities, to its own grave detriment and that of the race.

The family is nature's means for the existence and maintenance of the individual life. It is the first society known to nature. It existed even before the State. Nature's chief interest, therefore, in regard to human well-being is centred in the family, the source and sustainer of human life. In the eyes of nature the interest of the family is paramount, it is an absolute requirement of the law of nature. That private property is necessary in that interest, more clearly even than in the interest of the individual or of society at large, we now proceed to prove.

(1) The man who summons children into the world assumes responsibility for feeding and educating those children. And because he has summoned them into life they have a right to look to him for all that is required for their development and perfection. Friends may offer to take over a father's responsibility. The State may offer to assume the duty of support. But the only

responsibility which nature recognises and on which it counts is that of the parent of the child. Even, therefore, if others undertake the care of his children, and even though in some extreme cases a father might be justified in allowing his children out of his hands, nevertheless a father's responsibility never ceases. He must be there if others fail to do what they have undertaken. He must be there even if they do not fail, since at any time the child is free to insist on its right to be reared, taught, supported, directed, tended by those from whom it has received its life.

This responsibility which nature imposes upon the father gives him the right as well as imposes the duty of gathering together a store of wealth, and gives him the right of property in that wealth. It is the chief condition of the future security and well-being of his children. Nor is there any limit in nature to the amount of property which a man may accumulate. For, in the first place, nature considers the possibility not of a few children only, but of many, so that a man may reach the fullness of years before the last child has been fully and finally provided for, a fact which entitles one to go on amassing property all one's life. Also, the children whom he summons into the world will themselves in the natural course of events found families, and the father has a right to put them into a secure position for beginning their married life. In this matter the needs of children are quite indefinite and, indeed, unlimited, and, therefore, a father may go on storing wealth to the end of his life and to any amount that he desires.* It will be said, indeed, that many men do not marry, or that a man may have no children. But these are accidents and not intended by nature. Every man is potentially the head of a family and, therefore, he is equipped by nature with a radical right to property;

* We must not lose sight also of the fact that a man may store possessions for himself and his wife against old age, as was explained in the last section.

and in accordance with this radical right he may accumulate property before his marriage, and whether he marries or not, and whether he has children or not. And since in the intentions of nature the family is of continuous growth and unending, so nature guarantees to each individual peaceful and lawful possession and enjoyment of his property for ever.

Property, therefore, is a fundamental necessity of the family and attaches to the very idea of family life.

But if property is necessary for the existence and ordinary well-being of the family, *a fortiori*, it is necessary for the better and more developed family life, the life that will allow of progress in trades, in studies, in art, in all that makes for human refinement. And if it is necessary for the family under normal conditions of health and well-being, so also it is necessary as a safeguard against sickness, against the untimely death of parents, and as a remedy for the various ills to which human life is subject. This is not, indeed, the primary purpose of property. But it is a secondary end of very great importance. Its primary end is the promotion of the family welfare under normal conditions of health and well-being.

(2) But a much graver danger to the family life than the economic loss it will be compelled to sustain in the absence of private property has now to be considered. In a system where private property cannot be owned it is impossible that men should be allowed freely to choose their partners in life,* or that marriage should be regarded in any other way than as a union terminable at the will of the State. Also under communism the dimensions of the family will of necessity be regarded as falling under State control, and in this way its existence and the existence of the race will be gravely imperilled. Let us briefly consider these two dangers to the family life in the communistic State.

* Plato, "Republic," V. 460.

Aristotle had no illusions about certain possible higher forms of communism which while nationalising riches, would leave the family intact. He knew well that in a system where property was common, persons would be common also. To Aristotle, therefore, Plato's advocacy of the common family as a feature of the best State was no mere accidental addition, it was an essential portion of the theory of communism. If a man may not own money or a store of goods as his own he certainly will not be allowed to choose a wife of his own. Neither will he be allowed to make the wife which the State allots him his own for ever, or for any period longer than accords with the purposes of the State. And if he cannot make his own of the products of his own labour, neither will he be given the ownership of the children which he brings into the world. If property is common, children will be common also. "Under communism," says Aristotle, "each one will have a thousand sons who will not be his sons individually but anybody's, and will be neglected by all alike." In a word, communism will mean the end of the family life.

The same conclusion is forced upon us if we consider the duty of the State under communism to provide for the citizens. Under communism the State will be the universal provider, and its duty is to provide the means of subsistence for every child that is brought into existence. In other words the State will be under an obligation to provide for each family according to the number of children in it. This being so, since he who pays the piper has the right to call the tune, the State will eventually see to it that it will be consulted in regard to every condition of the family life and particularly in regard to the dimensions of the family. Thus by placing limitations on the number of children to be brought into the world with a right of support from the State, the State will so restrain the free expansion of the family as to imperil its existence and the continuance of the race. This argument is developed later

in our present work in connection with socialism where only the sources of wealth are to be nationalised. It holds in a far greater degree in a system in which the State must provide and dispense not only the capital of the country, but also every other kind of possession required by its citizens.

Private property is, therefore, a natural necessity of the family; it is necessary both economically and morally, and its necessity for the family, even if it were not required for the individual and for society, would, of itself, be proof that private property is from nature, *i.e.* is a requirement of natural law.

(*c*) THE GENERAL INTEREST

We have seen that private ownership is necessary for the welfare of the individual and of the family. We now go on to show that it is necessary also in the interests of society at large. Three arguments are adduced by St. Thomas Aquinas,* all based upon the social welfare, in proof of the necessity of private property. They are as follows: (1) private property is necessary as an incentive to labour and as a condition of intensive production; (2) without it, economic order and organisation are impossible; (3) property is necessary in the interests of peace and a good moral life.

(1) "Every one," writes St. Thomas, "is more careful to look after what is his own private concern than after what is common to all or many, since every one avoids labour and leaves to another to do the duty that belongs to a number of persons in common, as happens where there are many persons to wait on you." (2) "Human affairs," he writes again, "are handled in a more orderly

* "S. Theol.," II. II^{æ}., LXVI. 2. It is because the principal ground of property is its necessity for the family welfare that it is discussed by Aristotle in his chapters on the family and the household ("Politics," II.); St. Thomas lays stress rather on the necessity of property in the public interest.

Two of St. Thomas' arguments given above, namely, the first and third, are taken from Aristotle.

fashion where every individual has his own care of something to look to: whereas there would be confusion if every one indiscriminately took the management of anything he pleased." (3) "A peaceful state of society is better ensured (under the system of private property) every one being content with his own lot. Hence we see that disputes arise not uncommonly among those who have any possession in joint stock."

Let us consider each of these arguments very briefly.

(1) The first is based on the necessity of incentives for human labour. For its economic well-being society depends primarily on the production of wealth. Now, wealth is not provided ready-made by nature. In nature there are the potencies of wealth only. These potencies have to be turned into actual riches by the exercise of labour, *i.e.* of human energy, mental and physical. Without labour, for instance, the soil of the earth would be comparatively barren. Without labour and particularly mental labour many of the most precious possessions of man would be entirely non-existent. Labour not only reduces the potencies of nature to act, but also increases these potencies a hundredfold. In fact, with the exception of a mere fraction of our present wealth, the riches of the world are entirely a result of human labour.* Then again, when labour has brought wealth into being, this wealth has to be brought to the doors of men. There would be little use in producing cotton, *e.g.* in great abundance in one country if it would not be conveyed to others, and worked up there into fabric, made into clothes, and exhibited in the shop-windows close to our homes. All this means labour, mental and physical, labour engrossing and unceasing, labour that taxes the capacities of men to their utmost. The wealth and well-being of the world, therefore, depend on human labour.

St. Thomas' argument is that, under the crude form of communism which he considers, where, namely,

* *i.e* labour in its broad sense—not mere manual labour.

everything is owned by everybody and each man has a right to reap the fruits that another has sown, the individual will have no inducement to put his best energies into his work, and so the wealth of the world must necessarily diminish. But the same holds true of that system of organised communism not considered by St. Thomas in which the State appoints and determines the work to be done by each man, putting one man in charge of a certain tract of land, another in charge of a warehouse, another to work in quarry or mine, and then ensuring that the fruits of their work should be sent into the common Treasury to be distributed from that amongst the people at large. A man does not work for labour's sake but for the fruits that result from labour; and since under this system the fruits of labour go, not to the labourer, but to the community, it follows that men will have very little interest in their work and will not bestow their best energies upon it. Wealth, therefore, will not be produced on the same large scale as under the system of private ownership, and so the communist State will remain comparatively poor and unprogressive.

(2) Having shown that private property is necessary for the production of wealth in abundance St. Thomas next goes on to prove that private property is more conducive than communism to economic order. Under the system of private property the use and administration of each piece of property, be it land, or a factory, or a warehouse, falls automatically to a definite person, *i.e.* the owner. He alone has the right to use or administer his property. Thus, though under the system of private ownership there may be conflict of interests between one person and another, there can be no conflict of function. Each man knows definitely what he has to do and he does it without interference from others. Again, there is no difficulty as to the ownership of the fruits. The fruits derived from property go to the owner of the property and to him alone. Thus

under this system of private ownership, the simplest that could possibly be devised, the great complex machine of the world's commerce keeps ever moving, turning out wealth in fabulous amounts and distributing each part of that wealth to its proper owner without friction or confusion or difficulty of any kind.

A system in which all things are owned in common will necessarily lead to effects the opposite of this. It must lead to unending confusion both as regards the functions to be performed by each and the rights of each in regard to the fruits. Of course it is possible for the State to remedy this confusion in some measure by appointing individuals to do each a definite portion of the national work, and by distributing the wealth of the State according to some definite principle amongst individual families. But this could only be done on a very small scale by the State. How could the State undertake the distribution of all the wealth of the country amongst the inhabitants, *e.g.* the chairs, the tables, the pictures, the houses; and how could it appoint functionaries to administer the ten or twelve millions of places filled by the workers of Great Britain to-day. At most it could appoint the highest and most general functionaries, and outside of their work all would be confusion as we have said.

Besides, anything that the State might do in this connection would necessarily be of its nature curative or remedial, a purely artificial device invented for the purpose of allaying the disorder that always results from interfering with nature's plans and purposes, and the very necessity for finding such a remedy is of itself a proof that communism is a departure from nature and the natural requirements in regard to property. From the beginning men have been working according to the system of private property. From the beginning men were provided by nature with faculties for utilising and opportunities for appropriating the goods of nature. And they have used their faculties

and opportunities, and have already appropriated much of the wealth that lies around one invitingly everywhere. Under this system of private ownership, as we said, there could be no confusion or disorder. It is the simplest and most direct system possible for utilising wealth, and fulfilling nature's injunction to get the best out of the natural sources. If, now that this system has been established, with nature's recognition and consent (and it must be remembered that even now the system of private ownership is simpler than any other) the State were to interfere, and, for purposes of its own, however laudable, were to throw all things into the melting pot, negativing all existent titles, then, even though society might devise remedies to patch up the resulting confusion, her devices would be of their nature, not original, but *remedial*, and consequently we could no more speak of the programme of the nationalisation of all wealth as natural, than we could speak of surgical operations as a design of nature, simply because medicines and apparatus can be devised to remedy the evils which operations entail. A system that promotes disorder cannot, we venture to submit, be regarded as commanded by natural law, even though the disorder which is created is capable of being remedied by some device of human reason.

In general, then, we think that the proposition, so simply put forward by St. Thomas Aquinas, that under communism things are not handled in "so orderly a fashion" as under the system of individual ownership, is borne out by reason and experience; and, therefore, we claim, it is the system of private and not of common ownership that best meets the requirements of nature in regard to society.

(3) In his third argument St. Thomas emphasises a difficulty in the way of the communistic State which has already been hinted at in our development of the second argument. Under the system of private ownership each man is content with his own lot, not in the

sense that he may not wish for more than he has, or that he may not have much to complain of in his fellows, but in the sense that under the present system a man is allowed to determine his own career, that having worked and received the value of his labour, he may save his money, build up a fortune, and follow any avocation that he likes. At present success or failure in life depends at least very largely on a man himself. Under the system of common ownership a man's circumstances and position depend *wholly* on society. For, first, what he receives for his work depends upon society. He will eat and clothe himself not out of his own money but out of the common stock and only to the extent to which government allows. Secondly, his position in life is determined by government. Also, though having a right of equal treatment with all other men he will, nevertheless, be treated most unequally. For, under communism, whereas all are supposed to have equal rights to positions and to be equal owners of the national property, it will be impossible to give equal treatment to all. The work of the miner will have to be performed as well as that of the clerk, the doctor, the engineer, the traveller, and the diplomat. The precious and more valuable things amongst all the articles owned by the State will, if they are to be used at all, have to be assigned to some in particular and not to others. They cannot be given to all. In general terms, therefore, under the system of private property, man's lot is largely dependent on himself, and there is no man who, if he has ability and is willing to exercise it, may not do much to better his position in the world. Under communism a man's lot is not determined by himself in any way. Under that system the individual is only a pawn in the hands of the State, with no right of direction over his own movements. In the communistic State, therefore, every failure and misfortune occurring in the community will be charged up to the government, and the public spirit will be one of universal un-

rest and discontent. In proportion as any man is the maker of his own way and of his own fortune he is content with the position in which his own actions place him. In proportion as his position and fortune are determined for him by others his tendency is to be restive and rebellious. Under the communistic system a man's right of freedom and self-direction is wholly ignored. His life from beginning to end is determined and controlled by arbitrary decree on the part of the public authorities.

It may be objected that there are inequalities also in our present system. But it is to be remembered that whatever inequality attaches to our present system attaches to a system based admittedly on a theory of inequality in talent, energy, and luck, three undeniable facts of human life. On the other hand the inequalities of the communistic State are inequalities accompanying a system specially designed for the removal of inequalities, a system under which men are induced to give up all right of personal initiative and of freedom and to place themselves unreservedly in the hands of the State, in order to receive equal treatment with all others. We claim that while comparative peace and contentment are possible under our present system, with some exercise of good will all round, they are unimaginable under communism.

These are St. Thomas' three arguments in favour of private property and in disproof of communism, based upon the conception of public utility and the peace of society.*

* Aristotle adduces two other arguments. One is the argument (Pol. II. 5, 9) that private property affords opportunities for the exercise of such virtues as temperance in abstaining from other people's goods, and liberality in dispensing one's own. The second argument is political in character—under communism it would be difficult to determine the kind of government involved. Both arguments it seems to us are based on considerations which are accidental and extrinsic to property.

THE SCOPE OF OWNERSHIP, OR THE DUTIES ATTACHED TO OWNERSHIP

We have already stated that ownership* entitles a man to use his property in any way he wishes. Now when we say that a man may do what he likes with his property our meaning is that he may do so in so far as mere justice is concerned. But a man may have obligations in charity or friendship or liberality as well as in justice, and these obligations often place serious limitations upon our freedom in regard to property, sometimes binding us positively to share our possessions with others, sometimes negatively—not to use our property to the detriment of others. Again, the rights of ownership may be limited by obligations even in justice, resulting from the conditions under which ownership is held, and these conditions may, and, as we shall presently see, do hold not only for some but for all kinds of property. In this way we find that the rights attaching to property, though always extensive, and important, and though in the abstract, that is, considering the effects of ownership only, they are unlimited, nevertheless, actually they are limited by many and grave responsibilities, and are, therefore, far from being of that absolute character which many people are wont to connect with the idea of ownership.

In three principal ways* a man may find his liberty to use his property in any way he pleases limited and conditioned by natural law. In the first place a man is bound *in charity and friendship* to be open-handed, neighbourly, and generous with others, particularly with the poor, and to lend or give in reason, according to their requirements. A man should not shut the whole world out from his property as if the world had no

* We are here enumerating *natural* responsibilities only. The civil law also attaches special obligations to property such as the obligation of paying taxes, of keeping property in repair. These obligations are often very numerous and irksome, but the State has a right to impose them for the sake of the common good. We have nothing, however, to do with such obligations here.

claim upon him, and as if he were under no indebtedness to the world. Every man is bound to love his neighbour, and the test as well as the natural result of our love of others is the sharing of our goods with them. Also, even though a man acquires property by his own exertions, his exertions and his attainments can never be so much his own as to render him independent of the rest of the world. In every act that we do there is some degree of indebtedness to the labours and the genius of others, either in the information they help us to bring to our work, or the instruments they make it possible for us to use to attain our end.

This duty of openhandedness and neighbourliness in sharing our goods with others is expressed very vigorously both by St. Thomas * and Aristotle † when they say that though property may be owned and administered by private persons, the *use of it ought to be common*, not in the sense that other men have the same rights as ourselves, but that owners should be liberal and considerate to others in their needs. "Among the good," writes Aristotle, "*and in respect of use*, friends, as the proverb says, will have all things common. . . . For, although every man has his own property, some things he will place at the disposal of his friends, while of others he shares the use with them. The Lacedaemonians, for example, use one anothers' slaves and horses and dogs, as if they were their own, and when they happen to be in the country, they appropriate in the fields whatever provisions they want. It is clearly better that property should be private, and the use of it (in the sense just explained) common; and the special business of the legislator is to create in men this benevolent disposition."

Secondly, a man is under an obligation *in charity* not to use his property in such ways as will prove detrimental to the public interest or to a large section of

* "S. Theol.," II. II^æ., LXVI. 2.
† "Politics," Book II.

the people. A landowner should not depopulate a countryside simply in order to extend his parks and hunting grounds, unless, indeed, the people can be as easily accommodated and as easily find employment elsewhere. In the use of our property we are bound to have regard to the public interest.

Thirdly, an owner is bound *in justice* to come to the aid of those in absolute distress. To a starving man he must give food. If the community were in absolute distress he might be bound in justice to give even a large part of his possessions, always, however, provided that his own family is not reduced to want thereby. A man's first duty is to his wife and children.

The exposition of the reasons on which this last instance of the responsibilities of property is based introduces us to a very interesting problem of ownership which we shall here briefly explain, even though, in treating of it, it is necessary to anticipate something that belongs more properly to a later portion of this chapter. How can it come to pass that a man is ever, *in justice* bound to come to the aid of others by giving to them what is his own? That a man may be bound in charity to help others is easily intelligible. But ownership confers a right of absolute disposal over one's property, so that *in justice* property belongs to the owner alone. How then may another be said to have a right in justice to our property under any circumstances? Our answer is that nothing that is owned is produced wholly by ourselves. We do not produce the materials of which a thing is made. Even if we have bought it from others there is always something in the object which others have not produced, which was the work of nature from the beginning. In other words, as we shall show later in the present chapter, all ownership begins in *occupancy*, in appropriating something to which we have no title or claim, and which we are allowed by nature to appropriate simply because without appropriation objects would never be taken into anybody's possession, and

the resources of nature would remain unused. Now a necessary natural condition of all occupancy is that what is "occupied" should not itself be necessary for the community. If it is necessary for the community it naturally belongs to the community, and no man has the right to appropriate it. And this condition which governs every act of occupancy in the beginning continues to attach to the thing which is owned as long as it remains, and no matter into how many hands it subsequently passes. Let an object at any time during the period of ownership become absolutely necessary for the community, or for any part of the community, necessary, that is, to save the community or part of it from extinction, and that which we found to be an essential condition of occupancy in the beginning, becomes operative once more and confers upon those in absolute distress a right in justice to that which is necessary for their relief.

The Natural Titles of Ownership *

Having assigned the chief grounds or reasons of the system of private ownership, we now proceed to enumerate the principal natural *titles* of ownership, that is, the facts or events by which particular owners come naturally to have a right to own their property and to exclude all others † from the use of it. These titles are necessary,

* Salmond ("Jurisprudence") and Mackenzie ("Roman Law") speak of these titles as "modes of acquiring property." Austin (Lecture XIV.) defines titles as "the facts or events of which they (rights *in rem*) are legal consequences (or on which by the disposition of the law they arise or come into being), and also the facts or events on which, by the dispositions of the law, they (rights *in rem*) terminate or are extinguished."

† We here treat of the titles of ownership in its strictest sense only, *i.e.* ownership as exclusive of, or against the whole world. The right which a buyer possesses to retain goods which he has bought from one who is not the rightful owner avails against all others except the real owner, and it is spoken of as ownership against certain persons.

for, even though the system of private ownership is admitted on all hands, still before a man can make any particular object his own he must be able to appeal to some special fact or law which places the ownership in him rather than in others. It is these facts or laws that we shall here attempt to enumerate.

Titles are divided into *natural* and *artificial* (or civil), according as they spring from the natural law or from the positive, *i.e.* the civil law. Again, a title may be *fundamental*, i.e. one on which all the others depend, or it may be itself *dependent* on some other title. We shall treat here :—

I. Of the original and fundamental natural title to property, or that title which all the others presuppose, and which itself depends on and presupposes no other.

II. Of the chief subordinate natural titles.

I. THE FUNDAMENTAL NATURAL TITLE—OCCUPANCY

Some writers regard all ownership as grounded ultimately on the civil law. Thus, according to Hobbes,* all property is based on an express act of the sovereign. Others, again, regard labour as the fundamental title.† To our mind neither of these views is tenable. The first we reject because (*a*) private property existed before the State arose, when as yet the family was the only social unit ; and (*b*) because, even now, titles of ownership may be acquired without the consent of the State, as when an individual discovers and appropriates some valuable object in an unappropriated territory. His right to keep such object could not be founded on State law.‡ The second theory above mentioned we

* "Leviathan," ch. 24.

† Locke, "Treatises on Government," Bk. II., ch. V.

‡ It will be seen, however, that though the titles to property are not all founded on State law, nevertheless, the State can create titles, and to all titles, even those which she does not create, she can append conditions that hold in conscience as well as before the civil tribunals.

also reject because even in the things that are produced by labour, there is always something which labour does not produce, viz. the substance or the *original* materials out of which the thing is made, and unless these materials are first rightfully owned the results of our labour cannot be appropriated. A man, for instance, cannot on the mere title of labour become owner of the statue which he makes, unless he is first the owner of the marble on which his labour is expended.

The view to be defended here is that *occupancy* is the fundamental title of ownership. The full exposition of this thesis, however, will necessitate our establishing two distinct propositions, first, that occupancy is a proper and *sufficient* title of ownership, secondly, that it is a *fundamental* title presupposed in all the others. First, it is a *sufficient* title in the eyes of nature because it fully meets nature's requirements in regard to her goods. Nature places her goods before men to be used by them. She is satisfied, therefore, with any course which, while it offends against no pre-established right and against no enactment of the civil law (for, of the civil law also nature has a care, government and civil law being necessities of nature), effectually places her goods in the hands of men, and enables them to use her goods. Such a course or act is that of occupancy. Secondly, occupancy is a *fundamental* title presupposed in all the others. If somebody did not become owner of the land by occupancy, it could never be owned either by individuals or by the community. Without occupancy the individual could not become owner. To labour on it, for instance, would not give the necessary title because the land itself, though improved by labour, is not produced by labour. Nor could the community become owner except through occupancy: for the community does not produce the land, and even its right to spend labour on the land, and to prevent other outside communities from doing the same, presupposes

originally be based upon no other act or event than that of occupancy.

In general, then, since a title is any act or event which confers ownership, and since the first act or event which could possibly bring an individual or a community into direct relationship with anything in such a way as to give rise to ownership in it, is the taking of it into somebody's possession, occupancy is a necessary presupposition of all titles of ownership. "Le seul cas absolument incontesté d'acquisition par un mode originaire est l'occupation, l'acquisition par la prise de possession de choses qui n'appartiennent à personne." *

The Conditions of Occupancy.

To be a valid title occupancy must fulfil certain conditions. Some of these attach to the *act* of occupancy some to the *object*.

The act of occupancy plainly includes two elements. First, it involves the taking of something into one's power or possession with the intention of holding it as one's own. Secondly, the act must be such as to convey to others some intimation that proprietary possession has

* Girard—"Droit Romain" (4th ed.), p. 314. Locke maintains that even when things are acquired by occupancy it is the labour exerted on them that really creates the title. As Westermarck, however, remarks, it is only by means of "strained construction" that occupancy may be explained in terms of labour.

Others, like Salmond ("Jurisprudence," p. 413) and Markby ("Elements of Law," ch. IX.) represent occupancy as one division of the more general title of *possession*, or the right which possession gives one to keep the thing possessed even though it is not owned on any other title. We contend, on the contrary, that "occupancy" and "possession" are specifically distinct titles. For (*a*) occupancy is a natural—possession, an artificial title. (*b*) Their ends are different; the end of possession, as Salmond confesses, is to "prevent force and fraud," that of occupancy is to make ownership possible—without it ownership could never begin. (*c*) They differ in their effect: occupancy confers a title against the whole world; possession confers the right to keep what is possessed, but only as against some. At least the rightful owner of an article may sue for his property, or even take it by force. (*d*) Occupancy is a rightful and legal act. Possession may be illegal, as in the case of things purchased from one who is known not to be the owner.

been taken. From these it is evident that the act of occupancy must be *external*.* By means of a purely internal act one could not be said either effectively to take possession, or to intimate such possession to others. What is this external act? It is any act which brings an object within one's power and can be understood by others as an indication of ownership. Naturally it will vary with the kind of object which is appropriated. It is not sufficient, for instance, to point a gun at a wild animal; it must be shot or taken into possession in some way, if it is to become one's private property. Appropriation in land is effected not only by tilling or enriching the soil, but by any act which in the common judgment of men would be regarded as seriously preparatory to use, such as fencing the land or marking it out for use. A State usually occupies land by certain acts indicative of annexation, *e.g.* planting a flag or reading a proclamation, and by permanently establishing civilised inhabitants with some kind of civilised administration upon the land.†

Other natural conditions attach to the *object* which is appropriated. *First*, we cannot appropriate by occupancy what already belongs to another person. *Secondly*, we cannot "occupy" any object which is necessary for the community, unless the community freely allows occupancy in the case. This necessity gives to the community a claim upon the object which effectively bars the right of any individual to appropriate it in his own interest. *Thirdly*, since ownership is the right of exclusive use, that which of its nature cannot be exclusively possessed is not a fit object of occupancy. No man can claim to own the air, though

* Some writers maintain that the external act is sufficient without the intention. See Markby, "Elements of Law," ch. IX. This view is obviously wrong. Ownership has its rights and its responsibilities, and neither of these can be assumed without the intention to assume them.

† Which act is known as "settlement." All these natural con-

there are writers who claim that a man may own some portion of space which the air occupies, that, namely, above or, as some say, immediately above one's land. *Fourthly*, since ownership is the right of use, the right of ownership extends to objects in such quantities only as admit of genuine use. An individual could not claim ownership over a whole continent, but only, to use the words of Locke, over "as much as any one can make use of to any advantage of life before it spoils." A somewhat similar condition applies in the case of occupancy by the State. The exact amount, indeed, which a government is allowed to occupy is largely a matter for international law to settle, and as yet international law has not fixed the amount. But the spirit which actuates the decisions of international law in this respect would seem to be the same as that which has fixed the rights of individuals. States, it would seem, are allowed to occupy as much territory as they hope to be able to control, if not at once, at all events in the near future.*

We said that it is no easy matter to determine the extent of territory which it is possible for an individual to utilise and control. It is certain, however, that when a man effects a property in land by occupancy, his control of it is supposed to be limited to that portion of the land which he undertakes to use, viz. the surface of the land. By surface land we mean such a depth of land as can in any way influence or may be in any way affected by operations at the surface, such as building and planting, both of which operations produce results or are affected by conditions existing far below the

* See Lawrence, "Principles of International Law," ch. II. sec. 74. It was explained by the American negotiators at Madrid in the controversy of 1803–1805 about the boundaries of Louisiana that "when any European nation takes possession of any extent of sea-coast that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover." Such, to our minds, is just the extent of territory over which the occupation of a line of sea-coast gives or promises some kind of effective control.

level at which the operations actually occur. We know of no principle of *natural* law which would give a man who obtains possession of a certain portion of the surface of the earth any rights over levels that lie below those just indicated, and certainly there is no natural law by which surface rights are extended, as is sometimes claimed, to the centre of the earth. The natural law does not, indeed, set a bar to such an extent of ownership. Also it is possible for the civil law to declare the owner of the surface lands owner also of everything to the centre, for, as we said before, the civil law is empowered by the natural law to affix the conditions and determine the rights effected by occupancy. But it is well to emphasise two things in this connection—first, that it is only as a result of civil law that property in the surface of the earth can be understood as extending to the centre of the earth; secondly, that the wisdom displayed by the civil governments of the world in this connection has not always been of the highest order. Experience and reason have both proved that it was a mistake of English law to recognise that a man in occupation of the soil was also necessarily in occupation of the solid earth to the centre. Coal seams should never have been deemed to belong to the mere landowner. There have been discussions even in the case of governments on occasions of annexation as to the legitimate occupancy of the hinterlands; there should have been none as to the wisdom of extending mere surface occupancy to the underlands. Such occupancy, as we have already said, we do not consider as barred positively by natural law, but it was unwise of the civil law to recognise the title of the landowner as sufficient also for ownership of all that lies beneath.

Occupancy is not of much practical account in modern civilised States, since all the land of the earth is now practically "occupied." And even such unoccupied territories as still remain, like Central Africa, have been

to each competing government is fixed by special treaties or understandings. The only cases in which occupancy is still to be regarded as an operative title are those of the finder, fisherman, and hunter. Their rights may easily be deduced from what has already been said on the conditions of ownership, or they are decided by special civil enactments in each country.

II. SUBORDINATE NATURAL TITLES—LABOUR

We have seen that labour is not the fundamental and underived title of ownership. We must here show that, though subordinate and derived, labour is a genuine title of private ownership.

By nature every man is constituted master of his own self including his own energies, mental and physical; or rather nature has conferred on each of us something which is even higher than ownership; for in making our energies part of our own personality she has made them so much our own that not only have others not a right to take them from us or use them, but they *cannot* use them nor force us to use them, except we ourselves agree. Nature, *therefore*, has made our energies ours, not by moral right only, but also by physical necessity. They are unthinkable as anybody else's. Even, says Locke, though the earth and all creatures were common to all, yet one thing could in no sense be regarded as common; for by nature "every man has a property in his own person. The labour of his body and the work of his hands are properly his."

Now it is this "ownership," if we may use the word in a broad sense, which nature has given us over ourselves and our energies, that gives to a man a right of ownership over the things which his labour produces. For just as the heat which results from the motion of a falling body is nothing more than the kinetic energy of that body transformed into heat energy, so the results of a man's labour are nothing more than his own energies,

physical and mental, transformed into the products of energy. These energies are expended at our own bidding; they appear again in another form, that, viz. of the fruits or products of labour. Being masters, therefore, and owners of our own energies, we are owners also of the new forms, shapes, natures—the new values generally in which our labour results, and into which our energies have been transformed.

Labour, therefore, is a rightful title of ownership. It gives a man a right to the new forms and values which his labour, mental and physical, produces; and, granted that by occupancy by purchase or by gift he owns also the material in which these new forms and values are produced, he becomes by labour owner of the rest, and his property in the object is, therefore, complete.

GIFT

The consideration of "gift" properly belongs to the subject of contract. Here, however, we may be allowed to consider one important question, viz. whether "gift" is a natural title of ownership.

Gift means the gratuitous placing of the ownership of a thing in the hands of another. It is of two kinds—simple gift (donatio inter vivos) and bequest. We shall say a word on each of these, adding a short paragraph on another natural title of ownership cognate to the title of bequest, viz. intestate succession.*

That gift is a natural † title of ownership is evident in the first place from the conception of ownership

* These two latter titles make up the natural title of inheritance.

† Our statement that "gift" is a natural title is in no way affected by the fact that as Markby says ("Elements of Law," p. 248) "the general right of alienation which now exists has been slowly and painfully gained." Though gift is a natural right, still, like most natural rights, its exercise is subject to the control of positive law. The early positive laws did much to restrain the exercise of this right. Another reason why the right of "gift" was limited in ancient times is found in the fact that in early history property belonged rather to the family, *i.e.* the family as a continuing unit, than to the father. He, therefore, had not the right to alienate the property freely to others.

itself. Ownership is the right of disposing of a thing as one wishes, in which right is certainly included the power of giving it to another. Secondly, this right is necessary for human progress. For the contract of selling is necessary for progress, and giving is a necessary part of and contained in selling. Selling means giving for a price.

BEQUEST

Bequest is a declaration of a person's intentions in regard to property designed to take effect at death.

Bequest is a natural right of property. For, first, it is contained in the very idea of ownership. Ownership brings with it a natural right of absolute control. But absolute control includes the right to dispose not only of the present but of the future use of property, and without limit as to time. And bequest is only an exercise of this power. Secondly, bequest is necessary for the peace of mankind and for social development. For, property for which there is no successor either becomes derelict on the death of its owner, in which case confusion and endless strife ensue; or it passes to the State, in which condition of things there is no incentive to induce a man to accumulate more than is required for his own life; and without the accumulation of capital, economic development is impossible. Thirdly, property is, as we have already seen, primarily instituted by nature for the good of the family, and, therefore, a father should at least have the right to bequeath the family property to his wife and children.

A Difficulty.

The chief difficulty confronting one in connection with this theory that bequest is a natural right is that the act of bequest seems to be inherently contradictory.* The

* The objector here takes it for granted that it is only nature that cannot deal in contradictions. The civil law it is supposed could regard as valid the most absurd and contradictory of acts.

testator, it is said, is supposed to retain ownership of his property during life. And after death he is not in a position to confer ownership on another. Bequest then would seem to be impossible.

Reply.—This difficulty is solved in different ways. Some maintain that bequeathed property passes to the beneficiaries not after or at, but before death, viz. during the last moment of a man's life and, therefore, whilst he is full owner of it. Hence the expression, "this is my last (act of) will and testament." Under this interpretation of bequest the contradiction referred to in the present difficulty does not arise. Others maintain that the transference takes place *at* the moment of death, not before or after: and it is pointed out that it is only *after* death that a man is not in a position to dispose of his property. It is objected to this solution that a man cannot validly transfer property at the moment at which he is himself losing hold of it, that to transfer property a man should be firm holder of it at the time of transfer. The defenders of the present solution, however, reply—why may not transference take place at the very same moment that a man is losing hold of his property. In "gift" the donor loses ownership and the donee comes into ownership at one and the same moment, otherwise either a moment elapses in which there is no owner, or there are two firm owners at the same moment, both of which suppositions are impossible. Just, therefore, as gift is a natural title in spite of the fact that the donor is losing ownership at the moment of transfer, so also bequest is natural under the same condition.

Either solution seems to us to answer the difficulty fully. The transference of property in the case of bequest takes place either during the last moment of a man's life, or at the moment of death. It does not take place *after* death.

INTESTATE SUCCESSION

We may be allowed to treat very briefly here of another title to property, cognate to the title of bequest, that, viz. of intestate succession.

That intestate succession is natural, at least in the case of succession by the children or by the mother and children, is proved as follows: (*a*) The children are naturally the continuation of their father's personality. This is why in nearly all civil codes the children at

least are regarded as "necessary heirs" whom it is illegal to dispossess. They, therefore, should succeed their father as owner. (*b*) In *a broad sense of the word* the father holds his property as a *trustee* for his family, since, as we have already seen, property is intended by nature primarily for the family. On the death of the father, therefore, the family will naturally succeed. (*c*) The father is not a mere individual. He is *naturally* also a member of the wider unit of the family. On the death of the father, therefore, the property should pass automatically into the possession of that wider unit. (*d*) During life a man's wife and children share in the same social *status* as the father. They are, therefore, in a sense subordinate co-proprietors with him of all those things that determine social status, and principally of property. At his death, therefore, they have a claim on the property which no other persons have.

For these reasons it is evident that when a man dies intestate his family ought to succeed by natural law. But the same reasons can be made to prove that a man in *bequeathing* his property ought not to be unmindful of the needs of his wife and children. Even though the father is by the civil law regarded as sole legal owner, his wife and children have natural claims upon him that cannot be ignored. He may, indeed, exercise some discretion in regard to his property, but he ought at least to leave to wife and children as much of his property as will, with some exercise of energy on their part, open out a road to their future prosperity. Indeed, the public interest dictates that unless a property is in danger of being squandered, the bulk of it should not be dissociated from the family. It is mainly through the family that property increases from age to age.

PRESCRIPTION AND ACCRETION

We feel compelled to say a word here on two special titles of ownership which, though technically civil titles, are yet based upon strong and compelling natural grounds.

The first of these is the title of *prescription*.* A full discussion of this title of prescription would be impossible in a work like the present, but it is necessary to say how it stands in relation to the civil law. Without aiming at a precise definition of prescription we may describe it with Salmond † as identical with the effects of lapse of time in creating and destroying rights of ownership. Thus in England a man may not recover at law payment of a debt six years after it first becomes payable. A right of way over private land is established after twenty years of *de facto* use. In the civil law, therefore, it is evident that merely through the operation of lapse of time a right or a part right of ownership may be lost to one person and acquired by another.

Now evidently this title has its origin in the civil law only and not in the natural law. It is not natural, because a man's right of ownership over an object could never in strictness be defeated by want of actual possession and lapse of time alone. But, though nature herself does not set up prescription as a law, she urges it most strongly upon the civil government as something highly necessary for the welfare of the community, and the reasons for which it is urged by nature are as follows: (*a*) without laws of prescription all ownership would be uncertain. Claimants might arise at any time to question some past transaction in connection with the transfer of property—documentary and other evidence in defence of the owner having in the meantime perished or become unavailable. (*b*) Without prescription contracts would be impossible. No sensible man would take the risk of purchasing property the ownership of which was liable to continual examination and question without limit of time. (*c*) The fact of possession over a long period is itself normally a presumption of rightful ownership.‡ And this presumption is sufficient to justify the civil authorities in accepting actual possession over a long period as indicative, even against arguments on the other side, of rightful possession from the beginning.

The important question arises whether *good faith* is necessary in natural law for prescription. It certainly is necessary for

* For the history and derivation of the word "prescription," see F. Girard, "Droit Romain," p. 299. For difference in Roman Law of *usucapio* (through which property was acquired) and *praescriptio* (which was an exception barring the remedy) see Mackenzie, "Roman Law," p. 195.

† "Jurisprudence."

‡ See Salmond "Jurisprudence," p. 416; also Mill, "Political Economy," p. 134.

the acquiring of the complete rights of ownership over a thing. Without good faith a mere right of way might be established by lapse of time. But lapse of time could not bestow rightful ownership over a stolen article, the true history of which was known to the purchaser of the article at the time of purchase. The reason is that the purchaser of such an article is bound to make compensation to the original owner for all losses sustained by him in respect of this article during the time of its retention, and it is impossible that nature should bestow upon a man a right to keep an object and at the same time impose an obligation of compensation for having it in his possession. Indeed if any *mala fide* possessor could become rightful owner on the mere title of lapse of time such title would operate as a permanent incitement to dishonesty, since even good men would at times be prepared to put up with a few years of moral guilt in the hope that lapse of time would finally lead to a right of honest possession.

Another title (accretion) technically civil, but yet based on strong natural grounds, arises where two objects belonging to different owners are inseparably joined. Natural law decides nothing as to the question in whom ownership of the joint object ought to vest. That is a question for the civil law altogether. But in general it may be said that the determining principle followed by the civil law in this case is the natural principle that what is accessory ought to be subordinated to, and to follow, what is principal. Thus in the case known as " accession " where of two things inseparably joined no change occurs in either, *e.g.* a picture printed by one person on another person's canvas, the painter of the picture becomes owner, with, of course, an obligation of compensating the owner of the canvas. Again, in the case technically known as " specification " where a substance belonging to one person is worked up by the labour of another into something quite different and more valuable, *e.g.* where grapes are turned into wine, ownership vests in the person who produces the more valuable " form." In Roman Law, however, it should be noted that this rule applied only in cases in which the old form was lost irretrievably A silver statue which could be melted down again to the form of silver bullion belonged in Roman Law to the owner of the silver.

CHAPTER V

SOCIALISM

DEFINITION

COMMUNISM is the theory that private possessions or private property of every kind ought to be abolished and the public ownership of property set up in its place. This theory we disproved in our last chapter, showing that from the point of view of the individual, of the family, and of the State, private property is required by natural law. The present chapter deals with socialism. Socialism is also a theory of common ownership, not common ownership of all property or possessions, but of one kind of property only, viz. capital. It advocates the total abolition of private ownership in capital, and the substitution of public ownership of all capital by the State.

By capital is understood all forms of wealth or property used for the sake of income. And as income is, as a rule, derivable only from property employed in the *production* of wealth, like land,* mines, and machinery, or in its distribution, like shops, warehouses, railways, steamships, banks, and exchanges so socialism is often described as the theory of the nationalisation of all the sources of production and distribution. This definition we are quite content to follow in the present work, but it does not represent the most fundamental notion in socialism which is the nationalisation of all capital or of all the sources of income.

Now, socialists are aware that to attempt to abolish private ownership in all the sources of income, down to

* Some writers speak of "land and capital." We see no valid reason for excluding the land from the notion of capital; the reason usually given, viz. that land is incapable of increase and, therefore, has no supply price and easily becomes the subject of unearned increment, only marks it out as a very special kind of capital.

the very smallest, would be a very unprofitable if not impossible task. And so they are prepared to allow certain exceptions to their theory that all the sources of income should be nationalised. They will, for instance, allow a man to own a very small garden, provided he does not grow things to sell; and a housewife to own a sewing machine to mend and even make clothes, provided she does not take orders from outside. Some socialists even make mention of certain small and unimportant businesses which might, under socialism, be allowed to remain in private hands. Now these are only exceptions, but they are manifestly inconsistent with the idea of socialism, and they serve to show how impossible socialism is, and how difficult it is to retain the essentials of socialism once we begin to introduce modifications into the theory so as to make it appear in some way possible and practicable. For where is one to draw the line? If a man may have a small garden for his private use, why not a hundred acres for his private use? If a family may own a sewing machine, why not own machinery for the production of all that they need? If a huckster's shop may remain in private hands why not a small drapery establishment? Extend these exceptions far enough, and the principle of private ownership in capital reappears, and may dominate our whole commercial system once more.

In the pages to follow we shall not take advantage of this inconsistency, being anxious to discuss the theory of socialism in the broadest spirit. The arguments, therefore, which we shall advance in our discussion will be found to avail not only against socialism in its strictest sense, but even against those modified forms of the socialist theory which allow of the retention in private hands of those very small sources of income which we have just mentioned.*

* Innumerable other differences exist amongst socialists of which no account will be taken in our discussion. Some, for instance,

HISTORY OF MODERN SOCIALISM

We must ask our readers to be content with the briefest possible reference to ancient or even early modern communist or socialist systems.

Plato advocated the system not of socialism merely, but of extreme communism, including community of all goods, of wealth, of education. His theory was opposed by Aristotle, who gives in his "Politics" a reasoned defence of the system of private property.

Not all those theories which we shall select for mention in the modern period are theories of socialism; but those that are not in themselves socialistic will be found either to have helped in creating a reaction against the capitalist theory by emphasising certain vices of capitalism, or to have formed part of the socialist movement by advocating increase of State interference in industry, or organisation on the part of the working classes, or some other part of the socialist programme. These theories, therefore, when not socialistic in themselves, may be regarded as having in some sense prepared the way for socialism. With our definition of socialism before him the reader should have no

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claim that under socialism the State will be no more, others that under socialism the State will be world-wide. Again, there are the revolutionist and evolutionist schools of socialism which we shall describe in the historical note to follow. But the principal differences between socialists appertain to *religion* and the function and place of the *family* in the community under the new *régime*. As to these, one or two words are necessary. Socialist writers often complain that critics of their system instead of confining their enquiries and criticisms to what is essential in socialism, viz. the nationalisation of capital, attempt to raise prejudices against the theory by attacking certain views about marriage and religion which are in no sense a part of socialism, but are simply private beliefs and prepossessions defended by certain individuals who happen also to be socialists. About this contention we have to make the following remarks: first, socialists are themselves to blame for this supposed misdirected and unfair criticism. For it is the socialists who connect up the objectionable theories here referred to (such as that all present religion should be done away with, and that marriage should cease or undergo such grave modifications as are opposed to our present view of the essentials of family life) with the socialist system, defending these theories as part of the system and as necessary deductions from the principle of socialism. Secondly, most critics of socialism believe that socialism ought to be judged as a living movement rather than as a mere written theory, and certainly as a living movement socialism has been and is hostile both to religion and to our present family system. Its leaders are as a rule actuated by the most intense hatred of religion, and they make no secret as to their views of marriage. Marx, Engels, Bebel, Kautsky, and all the accepted authorities on

difficulty in determining which of the following systems are really socialistic and which are only preparatory to socialism.

In the early modern period we find a scheme not of socialism merely but of genuine communism developed in the conversation of one Raphael, in Sir Thomas More's * "Utopia." More does not himself express any adhesion to Raphael's communism ("I cannot," he writes, "agree and consent to all the thinges that he saide"), but he confesses that in the Utopian Commonwealth there are many things which he "wishes" but cannot "hope for." Other Utopias appeared later, in some of which, as in that of Campanella † in Italy, communism is advocated, whilst others, *e.g.* that of Harrington ‡ in England, recommend at least some law fixing the amount of property one can hold.

The theory of the equality of all men which was taught by Hobbes, Locke, and Rousseau, played no unimportant

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socialism are bitterly hostile to Christianity and to Theism. Again, the socialist bodies at their conventions adopt resolutions antagonistic to and directed formally against Christianity and authoritative teaching of any kind. The Austrian Socialists in May, 1898, passed such a resolution "with thunderous applause," as the *Vorwärts* reports —(See Cathrein, "Socialism," p. 220.). The French Socialist Party at Tours (1902) declared that "over against all religious dogmas, and churches . . . it sets the unlimited right of free thought," etc. It demanded also "abrogation of every law establishing the civil inferiority of women and natural or adulterine children," as well as the introduction of "most liberal legislation on divorce"—(See Ensor, "Modern Socialism," p. 347.). The living socialist *movement* is thus definitely opposed to Christianity and the Christian teaching on marriage, and even though a few, very few, socialist writers repudiate the anti-Christian attitude adopted in the movement, it is absurd to claim that socialism has no association with any other principle than the economic principle of the nationalisation of capital.

In the present work, however, we shall confine our discussion to this economic principle of the nationalisation of all the sources of income, since there can be no doubt that the nationalisation of capital is the fundamental principle, the first plank, in the programme of socialism, and from it the other parts of the programme are made to proceed. This is the one universally accepted tenet of socialist writers and leaders; and, therefore, it is rightly regarded as the true definition of socialism. But we shall see later (p. 269) that, whatever may be the views entertained by individual socialists, this doctrine of the nationalisation of all capital leads on to conclusions which are radically opposed to our present views as to the essential laws and attributes of the family.

* More (1480–1535).

† (1568–1639)—A Philosopher of the Italian Renaissance, born at Calabria.

‡ (1611–77)—Author of "Oceana."

part in the movement for the overthrow of capitalism with its most unequal distribution of wealth, whilst Rousseau's theory—that all our economic evils began when land was first taken into private hands, led directly to the theory of socialism.

Out of the French Revolution sprang a number of socialist or communist Utopias. One of these developed by Francis Noel Babeuf, who was guillotined in 1797 for having founded a secret society for the promotion of his ideas, is a theory of pure socialism. He claimed that all men should be assigned equal work in the State, even the disagreeable functions being undertaken by all in turn, and that all wealth should be under the control of the community and be distributed to each according to his needs. Godwin * also in England proposed a theory of pure communism.

The great social movement which led to the rise of modern socialism may be said to have definitely begun with St. Simon † in France. St. Simon was not a socialist, his doctrines are genuinely capitalistic. He maintained that the State ought to be built on an industrial basis, and that it should be directed, not by politicians, but by capitalists. It was on account of his insistence on certain rights of labour, viz. that the chief end of the State was to help the working classes, that the State should provide work for the unemployed, and should provide for their education out of the public funds, that his name is usually connected with the socialist movement. St. Simon's disciples, however, went much further than their master. In their works is emphasised nearly every argument against the capitalist system which Marx developed at a later period, *e.g.* the absence of freedom in the labour contract, the evil effects of industrial crises, and also something approaching to an "iron law of wages." They also constructed a positive socialist system based on these doctrines.

The "phalanx" view of labour advocated by Ch. Fourier ‡

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* (1756–1836)—Author of "Political Justice."

† (1760–1825)—Born at Paris. His two principal works are "The Industrial System" and "The New Christianity." His principal disciples, who, though not so well known, really did more for the socialist movement than was accomplished by their master, were Rodrigues, Enfantin, and Bazard. The two latter together wrote the important work "Exposition of the doctrines of St. Simon."

‡ (1772–1837)—Born at Besançon. His chief work is entitled "Exposition of the Four Movements." Fourier's theories on their economic side met with considerable commendation from John Stuart Mill.

is well known. He maintained that the community should divide itself into labour phalanxes of about 2,000 men each, living together in "phalansteries." After each man had been supplied with the necessaries of life, the profits derived from their labour should be divided in a certain proportion, viz. 5/12 to labour, 4/12 to capital, 3/12 to talent. In the phalanstery means should be taken to make all work agreeable, a matter, Fourier tells us, that could very easily be accomplished. But all should be made to work, and if any little disagreeableness did still continue to attach to certain employments those employments should be awarded additional remuneration. Fourier would not abolish private property or inheritance and so he is not a socialist, but from the doctrines that he did advocate his connection with the socialist movement is easily understood. Marriage, as an indissoluble union of one man and one woman, he would abolish. His doctrines are even in the direction of free love and community of wives—a strange theory, considering that he would still retain the right of private property.

A further step in the development of socialism was taken when Robert Owen * and Cabet † founded actual socialist colonies, one at New Harmony (Indiana), the other at Texas (Illinois). Both colonies were failures.

Louis Blanc ‡ attacked the competitive system, and advocated the formation of societies of co-operative production. He even obtained government subsidies for his work, which, however, came to nothing.

The theory that all wealth is produced by labour, advocated by Karl Rodbertus,§ and the same author's doctrine that wages under capitalism tend to remain at their lowest point: the conversion, by Ferdinand Lasalle,‖ of the latter principle into his celebrated "iron law of wages," viz. that wages under capitalism tend to remain at the level barely sufficient for the sustenance of the workman, and his programme of labour associations for the combating of capitalists, all these theories evidently bring us far on the way to socialism. The next name we meet with in the history

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* (1771–1858).
† (1788–1856).
‡ (1811–1882)—Of French origin, but born at Madrid.
§ (1805–1875)—Born at Greifswald.
‖ (1825–1864)—Born at Breslau. The strength of socialism as a living movement in Germany is probably more attributable to Lassalle than to anybody else. Though posing as the friend of the poor, Lassalle was a man of fashionable and luxurious habits.

of the socialist movement is that of the great founder of "scientific socialism"—Karl Marx.*

KARL MARX

In the course of the following chapters we shall have to study Marx's arguments in detail. We may, however, be allowed to give here a very brief account of the view which is developed in his world-famed book—"Das Kapital." Karl Marx confines his enquiry to an examination of the present capitalistic system, making only the briefest reference at the close of his work to the system by which capital is to be replaced, that viz. of collective industry. The system of capitalism, he maintains, not only ought to but will, sooner or later, be brought to a close and be succeeded by the system of collective industry. This claim is made to rest on two kinds of proof, first, the *historical* proof—embodied in his "materialist conception of history"; secondly, certain *theoretical* proofs, resting on certain vices inherent in capitalism. These two arguments are not wholly dissociated by Marx, as will presently be seen. The first argument is as follows: having shown in a previous work † that the development of industry takes the form of an evolutionary movement, carried out under necessary laws, and owing nothing whatever to strictly human initiative, that many changes which are generally attributed to direct human design are in reality automatic results due to changes that have occurred in the manner of production and exchange; that whereas it is usually thought that alterations in our economic system are caused by modifications effected in our social system, the opposite is the case, our social system, our ideals, our wishes being themselves effects brought about by alterations in the economic world—he then goes on in his work on Capital to apply his theory of evolution to the world of industry. Progress in industry, he tells us, occurs after the manner of an evolution determined by purely natural and necessary causes. In the develop-

* (1818–83)—Born at Trier in Rhenish Prussia. Like Lassalle, Marx was of Jewish extraction.

† "Criticism of Political Economy." The "materialist conception of history" which we here connect with the name of Marx is found in the fully developed form in which it is now usually presented in a work, not of Marx himself who presents only an outline of the theory, but of Marx's friend and collaborator Frederic Engels, named "Socialism, Utopian and Scientific." In this work we have a brief and very scientific presentation of the whole Marxian theory.

ment of industry each stage is the result of the stage immediately preceding. Capitalism * is itself only one of those stages and must pass away in time as the other stages passed. Even now it contains within itself the causes or germs of its own dissolution. One of these "immanent causes" whereby capitalism is to bring about its own dissolution, and the account of which forms the chief part of Marx's historical argument, is the ever increasing concentration that must necessarily occur in capital, leading to the formation of trusts, rings, cartels, pools, a process of concentration which is brought about by the very principle of competitive capitalism itself, the weaker firms being constantly forced to retire altogether or to amalgamate with the stronger firms. This ever increasing process of concentration, Marx tells us, must in time lead to the total abolition of competition, and to absolute unification of all capital in the hands, first of a very small group of individuals or bodies, and, then, of the State. The other causes whereby capitalism is to bring about its own overthrow, and which constitute Marx's second argument, are certain evils which are inherent in capitalism itself. For instance, under capitalism the surplus-value of labour is appropriated by the capitalist who yet does nothing to produce it; capitalism maintains a permanent army of unemployed men, the existence of which keeps wages at their lowest level; under capitalism, with its want of adjustment of supply to demand, crises are unavoidable, and so on. The future of the system is thus described by Marx †: "Along with the constantly diminishing number of the magnates of capital who usurp and monopolise all advantages of the process of transformation, grows the mass of misery, oppression, slavery, degradation, exploitation; but with this, too, grows the revolt of the working class, a class always increasing in numbers, and disciplined, united, organised by the very mechanism of the process of capitalist production itself. The monopoly of capital becomes a fetter upon the mode of production which has sprung up and flourished along with and under it. Centralisation of the means of production and socialisation of labour at last reach a point where they become incompatible with their capitalist integument. This integument is burst asunder, the knell of capitalist private

* This part of the argument dealing with concentration, which is given and criticised in the first place in our work, is presented by Marx after the arguments dealing with the evils of capitalism.

† "Capital," I. 789.

property sounds. The expropriators are expropriated." On the same page Marx also informs us that this process of expropriation will require an incomparably shorter time for its completion than did the process by which capitalism was itself developed out of the system that preceded it.*

Marx did not himself attempt to formulate any scheme of collective industrialism. He was content to show that collectivism in some form must arrive. This second task of construction was undertaken by Schaeffle in his "Quintessence of Socialism," a work which, although not written in defence of collectivism, has been, nevertheless, accepted by all socialists as a sound and reliable exposition (a few points excepted) of the form which the collectivist State must necessarily assume whenever it appears.

SCHAEFFLE'S † positive scheme of collectivism may be briefly summarised as follows: the system of private capital is to be replaced by that of collective capital: nevertheless, just as under capitalism, so also under socialism, freedom of demand is to be the guiding principle of trade, *i.e.* commodities will be produced as they are required and not merely as government desires: this will require "statistical registration of the free wants of individuals and of families" periodically arranged, a task apparently of great difficulty; but it will be considerably lightened by the fact that under socialism luxuries will not be required, luxuries being a need only for people of excessive wealth—a class that will not exist under socialism: under socialism coinage must cease,‡ commodities being paid for by labour certificates to be earned by labour; labour, or, to be more precise, "socially useful" labour, will thus be made, what, he maintains, in actual fact it is, the true norm of value: again,

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* The difference between Marx's system and those that preceded it are described in a characteristic and interesting way by his friend and co-worker, Frederick Engels, in the well-known work, "Socialism, Utopian and Scientific," already referred to. The pre-Marxian theories he describes as Utopian, *i.e.* they represented ideal systems devised for ideal men, systems which could only be *imposed on society from without* (p. 12). Marx's socialism is scientific, *i.e.* Marx studies society as it is. He studies the classes which compose it, and *in the economic conditions of society itself* he discovers the means by which the antagonisms of the classes are to be ended (p. 42) and the socialist State brought into being.

† A. E. F. Schaeffle (1831–1903), born at Württemberg; Professor of Political Science at University of Vienna, and also at one time Minister of Finance for Austria.

‡ On this point most socialists (*e.g.* Kautsky) differ from Schaeffle.

since only socially useful labour is to count as a title to reward, it will be for the State to induce men to turn their labour to useful purposes, by raising or lowering the price of labour according as it is more or less socially useful. It is generally believed that under socialism each man will be obliged to do the work appointed to him by the State, without any exercise of choice on his part. This idea is quite erroneous, Schaeffle tells us. Under socialism there will be "no compulsory assignment of posts." But there will be inducement and encouragement on the part of the State, in order that the necessary work may be performed.* "If socialism," he writes, "is not able to preserve all the good points of the liberal system such as freedom of labour and domestic supply . . . it has no prospect of, and no claims to, realisation."

The later history of the socialist movement concerns not the end or purpose of socialism, which we may now regard as fixed, but questions of means and tactics alone. On the one hand there is the *revolutionary* school in agreement with Marx, and led by such men as Kautsky † in Germany, Guesde ‡ in France, and Hyndman in England. These writers believe in revolution, not in the sense of a bloody revolution, but in the sense of compulsory overthrow of the present system. The means to this end are the strike, and mastery of the political machine. Violence will be resorted to only in the end and only to put down resistance on the part of the masters.§ On the other hand there is the *evolutionist* or *reformist* standpoint of which the most noted representative is Bernstein.‖ The evils, he claims, which Marx enumerates are largely imaginary. Socialism

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* Schaeffle does not tell us how this is to be accomplished. For an examination of this most difficult part of the socialist programme see p. 254 of present volume.

† Kautsky's best and most interesting works are "Le Marxisme et son Critique Bernstein"—his principal work, written in 1899, "The Social Movement," and "On the Morrow of the Social Revolution."

‡ See "Le Catechisme Socialiste."

§ Kautsky maintains that the growth of socialism is like that of the child in the womb, slow and quiet, but that the end will be in some degree violent and catastrophic like the birth of the child.

‖ Benstein's work is entitled "Evolutionary Socialism." Other thinkers of the reformist or revolutionist school are Millerand ("Le Socialisme Réformiste"), Jaurès ("Studies in Socialism"), Vandervelde ("Le Collectivisme et l'Évolution Industrielle"), Webb, and the Fabians.

is certainly an end to be striven for, not as a mere remedy for existing ills, but as something good in itself; not by miserable men such as it is supposed capitalism produces, but by successful and happy men. And men are, according to Bernstein, even under capitalism, gradually attaining to that degree of welfare and independence which will fit them for the advent of socialism. The advent of socialism will, accordingly, be brought about, not by way of reaction against, but by a gradual process of development and improvement within, the existing system. What, therefore, should most interest the socialist is the question of the ends that may be immediately obtained, for instance, the development of co-operative associations, the promotion of particular municipal and national industries, the institution of labour syndicates, particularly in such a form as will give to labour control of the political machine; and, finally, progressive taxation. But all these efforts should be made in view of the true end of socialism, which is the full and final concentration of all capital in the hands of the State.

We cannot bring this brief historical survey to a close without some reference, however brief, to two well-known recent movements in regard to the socialisation of capital, viz. Syndicalism and Guild-Socialism. Syndicalism aims at concentrating the ownership of capital, not in the hands of the State, but rather of the trade unions. For each department of industry there is to be one great union, and that union is to own the capital in the working of which it is specially concerned.* The method by which the present system is to be overthrown and trade union ownership put in its place is the general strike.

Guild-Socialism aims at placing, not the *ownership*, but the *management* of capital in the hands of the trade unions or guilds. The State will still be owner of all the capital in the kingdom, and private ownership will be excluded. Union control as opposed to State control will, it is claimed, greatly facilitate the management of capital, while State ownership will eliminate all the evils of private capitalism.

In the present volume it will not be necessary to consider these two systems as distinct from the general theory of Socialism. They both emphasise what is essential in Socialism and what we shall show to be intrinsically wrong, viz.

* Whether each of these unions is to be national or international is not quite settled; but syndicalists generally aim at internationalism.

the denial of the right of individuals to own private capital. Syndicalism and Guild-Socialism, therefore, must stand or fall by what will be said on the more general theory of Socialism or Collectivism. The method employed by the syndicalists, however, that viz. of the general strike, will be specially considered.

In regard now to our discussion on Socialism our intention is to address ourselves in the first place to the Marxian arguments and then to the socialist principle itself. No doubt there are socialists, like Bernstein, who have rejected the Marxian arguments. But these arguments cannot be ignored. For, first, they represent the only serious attempt of socialist writers to show that capitalism has inherent vices, which may be palliated by various means, but which can be eradicated from human society only by the total abolition of capitalism. The Marxian arguments, therefore, constitute the true and essential ground of the socialist system. Secondly, many members even of Bernstein's reformist school * make special reference to the Marxian arguments. Finally, it is the Marxian arguments that find most frequent mention on public socialist platforms, and that make the most urgent appeal to the understanding and sympathies of the labour world.

THE GROUNDS OF SOCIALISM

Our discussion on socialism in the present and following four chapters divides itself naturally into two parts. First, we must consider the grounds of socialism; secondly, the merits and demerits of socialism considered in itself. The grounds of socialism enumerated by Marx are, as we said, of two kinds. First, there are certain reasons developed in connection with his materialistic view of history; secondly, there are certain inherent evils in capitalism, which, it is asserted, can only be removed by the abolition of capitalism and the substitution in its place of the socialist system of collective industry. The present chapter will be devoted

* *e.g.* Vandervelde, *op. cit.* and Millerand, *op. cit.*

to the discussion of Marx's materialistic view of history. In the chapter following we shall consider the argument based on the supposed vices of capitalism.

The Materialistic View of History

It will be necessary in our discussion of the present argument to differentiate carefully between those points in Marx's view of history which are either irrelevant or of secondary importance, and what is really essential for purposes of our present discussion. It will not be necessary here to discuss the theory of determinism on which Marx bases his philosophy of history. We do not believe that the old problem of freedom *versus* determinism affects the present question one way or another. There are socialists who are libertarians, and defenders of capitalism who are not, so that we think it right to spare the reader the trouble of entering at this point into a preliminary abstract discussion on freedom. Again, it will not be necessary to discuss the problem raised by Marx whether our social system is the result of economic needs and activities, or, *vice versa*, whether economic needs and activities result from social institutions. Even if we did believe with Marx that men's economic needs were the most fundamental factor in the development of human institutions, the question would still remain whether socialism is lawful and whether it is a good and useful economic system or the opposite.

But on no principle can we avoid the discussion of the very serious problem which next follows in Marx's argument on history, namely, whether under the influence of forces inherent in capitalism itself, the capital of the world is not being slowly concentrated in fewer and fewer hands, whether a time must not finally arrive when all capital will be owned by one or a few individuals, whether, in short, the competitive capitalist system is not slowly breaking down under the opera-

tion of forces inherent in capitalism itself, and whether it must not finally disappear. The weaker and smaller industries, says Marx, are disappearing and must continue to disappear. The lesser undertakings are being and must continue to be absorbed in the greater. The greater are amalgamating with one another and must continue to do so in their own interest. Thus the "magnates of capital" are growing fewer and fewer. After a certain period competition will have wholly passed away. The handing over of ownership by the last few monopolists to the community should not lie beyond the resources of statesmanship; if it does, the proletariat will not fail to accomplish what statesmanship shall have failed to achieve. This theory we shall now proceed to examine with such a degree of fullness as the scope of our work allows.

THE LAW OF INCREASING CONCENTRATION IN THE OWNERSHIP OF CAPITAL

Our discussion on this point will be divided as follows:

I. It will be proved that the smaller industries are not disappearing wholly, or even in very great measure.

II. That even in the large industries there is no tendency to *unlimited* concentration such as Marx describes.

III. That even if there existed in the world of industry a tendency to unlimited concentration, socialism need still not be regarded as the inevitable goal of industrial progress. Between such tendency and the continuance of capitalism there is no opposition of any kind.

I. *The smaller industries not disappearing.**

Two questions must here be kept apart, that of the land and that of other industries and concerns.

* It should be remembered our present contention is not vital to our theory in favour of capitalism. Even if all the smaller

The *land*, taken as a whole, shows no tendency to concentrate in fewer and fewer hands. In one country there will be an increase of large or medium-sized holdings at the expense of the smaller or very small holdings: in another country an opposite tendency is discoverable. Taken altogether, it is generally admitted even by socialists themselves that very little, if any, concentration of ownership occurs in land.

In England,* between the years 1885–95 there was a large increase in the number of holdings of from five to fifty acres, fifty to one hundred, one hundred to three hundred. There was a decrease in the number of holdings described as large and very large.

In Germany, Bernstein tells us, between the years 1882 and 1895 the relatively greatest increase was in the number of peasant medium-sized holdings (12½–50 acres): and, lest it might be thought that these small and medium-sized holdings occupy only an insignificant portion of the total agricultural area, he points out that in Germany somewhat "over two-thirds of the total area fall under the three categories of peasant farms," *i.e.* very small, small, and medium-sized holdings, whilst in Prussia they occupy nearly three-fourths.

In Holland the statistics of the years 1884–93 show large increases in the number of farms of all sizes below those of 125 acres. Decreases occur in the number of larger holdings.†

In France, between 1862 and 1882, the number of holdings of 12½ to 25 acres increased by 24%.

Writing of America, Sombart tells us ‡ that "the average area of a farm in 1850 was 61.5 acres; in 1860, 51.9 acres; in 1870, 53.7 acres; in 1880, 53.1 acres; in 1890, 57.4 acres; and in 1900, 49.4 acres. There is no sign of concentration here."

In Ireland the whole land movement of the last forty years was towards the establishment of peasant *owners*, in place of the previous large estates parcelled out among mere *tenants*. The breaking up of what we call the large ranches is still further evidence of the decentralising tendency of land-ownership in Ireland.

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businesses were to disappear there would still be competition amongst the larger owners.

* Bernstein, "Evolutionary Socialism," ch. II.

† Bernstein, *op. cit.*

‡ "Socialism and the Social Movement," p. 76.

These instances need not be added to, nor need we enter into a discussion of what they convey, since socialists are all agreed that whatever may be said of industry, the land at all events shows no tendency to concentration. "If we consider merely the statistics," writes Kautsky,* "of the area of the different holdings it would seem that agriculture does not change: it is at a stand-still." He goes on, indeed, to show that the land is gradually becoming more tributary to, and dependent on, industry, that the masters of industry now aim at becoming owners of the land, or of such of it as will furnish them with the raw materials of their work, and that in this indirect way, since industry is concentrating, so ownership in the land may also be regarded as concentrating. But even if the land were coming in great measure to be owned (which it is not) by the masters of industry, our contention would still remain that ownership in land is not becoming centralised. The number of holdings is not decreasing but is rather increasing, whatever may be the cause.

Let us now attempt to deal with *other industries* and concerns than those connected with the land.† But before dealing with the question whether increase or decrease has taken place in the smaller industries or whether they tend to disappear or become merged in the larger industries, it will be well to point out that it is easy for the imagination to be overwhelmed by the accounts sometimes given by socialists of the capital that is gradually coming to be owned or controlled by the great industries and concerns, by trusts, rings, and companies; and that a false idea may very easily

* "Le Marxisme," p. 141.

† The question whether the smaller industries are disappearing is really identical with the question whether the total number of existent industries is lessening to a very marked degree. If it is lessening this can only occur, the socialists explain, through the disappearance of the smaller industries. That is why our present discussion is devoted to the question of increase or decrease in the total number of industrial concerns.

arise of the actual proportion which trust or company capital bears to the vast capital that remains, even in the most trust-ridden countries, in the hands of small owners. Thus M. Vandervelde lays stress on the fact that the trusts in United States of America (of which there were 353 in May, 1900), represented a capital of nearly two thousand million pounds. With such an enormous amount of capital absorbed by the trusts it would seem to the superficial observer that very little capital was left for private enterprise. The true significance of the figures, however, is only understood when we remember that in the same year the total capital of the United States represented a sum of 18½ thousand million pounds which four years later was increased to 22½ thousand millions.* The trusts, of course, also increased in the same period, but it is to be remembered always that the trusts are very far from absorbing all or nearly all the working capital of the State. We have taken the case of America because it is the country in which conditions are most favourable to the formation of trusts. In his address on American Trusts in 1899, Prof. Ashley says that in that year "hardly a day passed without the formation of some new Trust." In other countries, however, the capital of the trusts and companies represents an even smaller fraction of the total available capital of the country. In Germany the total capital in 1908 was sixteen thousand million pounds.† The paid-up capital of the various companies (only a portion of which could be regarded as akin to trusts) was in 1906 not a thousand millions. Accordingly when we hear of the immense sums that sometimes stand to the credit of the trusts and great companies we must not let our imaginations be deceived and think that there can only be a small margin left to be used by private capitalists. In estimating the value of the trust possessions we must consider not only their

* Webb, "Dictionary of Statistics," p. 631.
† *Ibid.* p. 630.

value regarded in themselves, but their value also in relation to the total capital of the nation. *

Let us now go on to treat of the question of fact raised by the socialists, viz. whether the smaller industries and other undertakings are everywhere disappearing or being absorbed by the very large ; or, which is the same thing, whether the total number of industrial and other undertakings is gradually shrinking, and tending to reach a small minimum, if not to come to something approaching to unity.

Now it would be idle to deny that in the future, as in the recent past, the greater undertakings (la grande exploitation) are bound to assume a more important *rôle* in the commercial world, relatively to the smaller.* The reasons for this fact will be given later. Still the evidence of statistics as well as reason itself makes it clear that whilst in certain kinds of undertakings there is a tendency to concentration, in others the tendency is of an opposite kind, so that on the whole it cannot be said that undertakings are subject to any law of shrinkage, and certainly not to the extent described by socialists ; and, therefore, it cannot be said that the smaller undertakings are condemned by economic law to complete or almost complete annihilation. Let us take the case of a country not in any way unfavourable to the formation of large undertakings, viz. Germany. In Germany the number of principal † undertakings was 3,144,457 in the year 1895, the number of persons employed in them being over ten millions. In 1907 the number of

* We have already said that even if *all* the smaller industries were to disappear our commercial system would still be competitive and capitalistic just as now.

† *Hauptbetriebe* or undertakings which employ persons who obtain therein the main part of their earnings, as opposed to *Nebenbetriebe* or subordinate undertakings which are only a supplementary source of income. We should point out that, just as there was increase in the *principal* undertakings mentioned above, so there was increase in the two classes taken together. The total number of undertakings in both classes together in 1895 was 3,658,088 ; in 1907 it was 4,025,591. What are here called " principal " undertakings (the word is used in the statistical tables) include, of course, both *large* and *small* businesses.

principal undertakings was 3,423,645, and the number of persons employed over fourteen millions.* In spite, therefore, of an undeniable increase, which can be seen in the statistical tables, in the number of large undertakings it is not easy to see that the period of years, 1895–1907, exhibits any unequivocal tendency towards complete centralisation or towards centralisation at all.

But, lest it might be thought that in point of the numbers employed, the increase that has taken place in the number of large or very large undertakings is of much greater importance than that exhibited by undertakings of small or medium size, and that, therefore, the increase of small undertakings is overshadowed by that of the larger, we give the following detailed table for Prussia, a part of Germany which is most favourable to the larger firms.†

"The figures," writes Bernstein, "of the (German) Imperial census of 1907 are not yet known, so far as the development in regard to size is concerned. But the figures for Prussia are known and they can be taken as a fair average for the whole Empire. They show for industry and commerce together (without railways, post, and telegraphs) the following figures :—

Establishments	Numbers		Persons Employed	
	1895	1907	1895	1907
quite small (1 person only) . . .	1,029,954	955,707	1,029,954	955,707
small (2–5 persons) .	593,884	767,200	1,638,205	2,038,236
medium (6–50 persons) .	108,800	154,300	1,390,745	2,109,164
great (51–100 persons) .	10,127	17,287	1,217,085	2,095,065
very great (501–1,000 persons) . . .	380	602	261,507	424,587
giant (5,001 persons and over) . . .	191	371	338,585·	710,253
	1,743,336	1,895,467	5,876,081	8,333,012

* Webb, *op. cit.*, p. 317.
† Bernstein, "Evolutionary Socialism," p. 57, note.

In this table it is only the "garret-workers," the quite small or very small enterprises that show a decrease. In the case of the small, medium-sized, and great industries, the increase in the number of persons employed is greater than that which occurs in connection with the very great and giant industries. But if the small, medium-sized and great industries, or even the two latter, continue to increase in number, then it is absurd to think that competitive capitalism is disappearing from our midst or that our present system is moving towards anything in the nature of an all-absorbing monopoly.

We make no apology for the following lengthy quotation from a well-known *socialist* writer * on the relation of the Marxian theory to actual fact :—

"Marx over-estimated the speed at which capital tended to concentrate. The pre-capitalist forms are not swept away as rapidly as Marx thought, nor do the giant organisations make such general progress as he foreshadowed, even in those branches of industry where the tendencies in that direction are great. To-day in Germany, according to the last census, there are (leaving out all agricultural pursuits) 4,770,669 persons employed in small establishments, *i.e.* establishments employing one to five persons. When we remember that the whole industrial army numbers some ten million people, it is apparent that the employees in 'small' establishments number nearly half. This refers to industry alone. In commercial pursuits the proportion is about two-thirds. Indeed, between 1882 and 1895 there was an increase of 10 per cent. in the population connected with the 'small' industrial concerns, and in commerce the increase in the corresponding class was nearly 50 per cent. for the same period. *The conditions in other lands are the same.*†

"Some scholars have rightly asserted . . . that these 'small businesses' are really dependent on capitalism.

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* Werner Sombart, Professor of Political Economy at the Handelshochschule in Berlin—"Socialism and the Socialist Movement" (1909), p. 74.

† *Italics* ours.

Even so their existence stands in the way of complete acceptance of Marx's theory of concentration. The same holds good with regard to the development of capitalist undertakings. The concentration here is a much slower process than Marx assumed. It is true that the large concerns increase much more quickly than those of middle size, partly at the expense of the latter.* But the middle-sized ones still continue. In 1895 there were almost as many people employed in these (again leaving agriculture out of account) as in the large ones—two and a half against three millions. From 1882 to 1895 there was an increase in them of over 76 per cent., which was almost as large as the increase in the ' large ' concerns—over 88 per cent."

We claim, therefore, that experience and actual statistics do not favour the view that under the capitalist system the smaller industries are doomed to total or nearly total extinction.

And what experience and actual fact attest is borne out also by our reason. It is most unlikely that the smaller businesses should ever disappear automatically or solely under stress of competition. For, *first*, the large businesses themselves create the necessity for certain smaller accessory trades and concerns which are in very many cases † better undertaken by other independent persons. They are better undertaken by independent firms, first, because the quality of the work may be such as requires specialisation, as in the woollen trade where, as Hobson says, " strong differences of quality occur " giving rise to " much specialisation ": and secondly, because no business firm could afford to allow its work to become too complex—" we must conclude," writes Hobson, " that as for every class of business there exists at any given time a normal size

* The reader must still remember what we stated, p. 163, that even if only the large undertakings survived they might still be as competitive as present concerns are.

† In some cases, especially the American trusts, a single business will combine different processes ; but, as we show in the text, this is far from general. See Hobson, " Evolution of Captialism," ch. VI. 2, 3 ; ch. VIII. 12.

of maximum efficiency, so there exists a normal degree of complexity." Thus no railway company would attempt to make all those things that are required for the construction of engines and carriages. Specialisation then is an absolute necessity in the case of innumerable branches of industry. *Secondly*, a great number of trades are better adapted for small industries than for large, *e.g.* certain kinds of wood- or leather-work, particularly those of the more artistic type, photography, the making of delicate instruments. *Thirdly*, there are innumerable departments of trade in which some degree of proximity of producer to consumer is a necessity, for instance, bakeries, confectioneries, laundries, dairies; to some extent proximity has also its advantages for tailor, shoemaker, and saddler; the warehouse in all departments must be near to the consumer. In all such cases the tendency is of necessity not in the direction of unification. *Fourthly*, in all departments of trade care and energy are a necessity, and these are more easily secured in businesses of small compass, and will enable the smaller firm to compete successfully with those of very large dimensions, even in spite of the many advantages attaching to large-scale industry.

Let us enunciate the conclusions to which we are led on the question of the fate of the small industries. In many departments, it is to be admitted, it is necessary that the smaller businesses should disappear as unable to stand the strain of competition with, or undertake the work possible to, the larger firms. But in other departments the smaller businesses remain and are likely to remain, not, as E. Vandervelde describes them, as inferior, stagnant, miserable, and wholly accidental encumbrances, but as a valuable and substantive portion of our economic system. It would be difficult to give anything of the nature of a rule showing the kinds of business that tend to concentration, and those that resist absorption with or destruction by the mammoth

firms. But taking the census statistics of the United States in 1900 and in 1905 * it is possible to show in what particular *factory-industries* increase occurred in the number of firms, and where decrease is shown. It is impossible, of course, to say whether these increases and decreases denote permanent tendencies. The facts are, however, that increases occurred in the number of factory-industries in connection with the following: food and kindred products; cotton textiles; worsted textiles; iron, steel and other products; paper and printing; liquors and beverages; chemical and allied products; tobacco; miscellaneous. Decreases occurred in connection with woollen textiles; lumber and products; leather and products; clay, glass and stone products; vehicles for land transport; ship-building. It will be seen that the former class of factory-industry is not less important than the latter. Indeed, if we might judge by the number of hands employed by those industries where increases occurred in the number of firms, as compared with the number of hands employed where decreases occurred, the advantage in point of the number of men employed is with the former. Thus in 1905 the total number of wage-earners employed in the former class of firms was a little below three millions, whilst those employed in the latter class numbered less than two millions. In Germany (here the statistical tables cover a wider range of undertakings than factory-industries) we find that between the years 1895 and 1907 increases in the number of undertakings occurred in gardening; cattle-rearing and fishing; mining; engineering; chemical industries; foods; cleaning; building; commercial; transport (excluding railways, post, and telegraphic) business; hotels and restaurants. Decreases occurred in quarrying, metal working, textiles, woodworking, clothing. The number of persons

* Webb, *op. cit.* 322. In the comparison that follows we have not made any arbitrary selection of industries for the purpose of establishing our own contention. We simply take the full list of industries as given by Webb in his statistical tables.

employed in the first set of undertakings was (in 1907) nearly nine millions; that in the second class was nearly five millions. The least conclusion to be drawn is that the departments in which concentration is not the rule, are not to be regarded as insignificant as compared with those in which concentration appears.

As to the future it would be difficult to make any prophecy. In some cases the smaller industries may disappear and monopolies may easily be effected. For instance, only the very largest firms are capable of building battleships. On the other hand, in hotels, in spite of the growth of large establishments, the smaller and medium-sized establishments must continue to increase. But, whatever the future may bring, it is certain that the statistics to hand afford no proof that at present, in spite of the long period which has elapsed since Marx made his prophecy, the tendency of industry is in the direction of the total or almost total elimination of the smaller businesses.*

II. *The tendency, even amongst the larger industries, is not in the direction of unlimited centralisation.*

This proposition means that even if there are, inherent in industry, certain tendencies towards greater centralisation, and even if the smaller businesses were to disappear, being absorbed in the large businesses, a point is uniformly reached where tendencies of an opposite kind appear which check and hinder further centralisation.

At the outset let us explain that we are here dealing

* The reader will find replies to some of our arguments in Kautsky's "Le Marxisme." For instance, Kautsky claims that Marx did not predict an absolute decrease in the number of capitalists, but only a relative decrease, *i.e.* that they would decrease in proportion to the population. This contention is quite incorrect. Marx goes so far as to tell us that "one capitalist always kills many," which certainly means absolute decrease. Also it is only on the theory of absolute decrease that we can understand his theory that as the number of capitalists decreases the exploitation of the workman grows.

with normal healthy competition only. We are trying to determine the *inherent natural* tendency of competitive capitalism, and the natural tendency of anything can only be determined by reference to normal healthy subjects. The business of a bankrupt, careless, or inefficient trader has no other tendency but to disappear, and to promote unification of ownership by its own disappearance. Also a very strong firm may under certain circumstances be able to knock out a very weak one.* But these cases do not prove that capitalism as such tends to disappear, or that the number of capitalists by a law of capitalism tends to shrink to unity, just as it does not follow that because a weak man dies or a strong man may kill him, therefore, humanity tends to disappear. The question which we have here to answer is whether it is possible to discover any law whereby healthy and efficient firms tend, without limitation, to become reduced in numbers by amalgamation and the formation of single monopolies. Some writers maintain that such a law exists—a law, namely, of further and further concentration and extension, many large firms uniting to form still larger firms,† until finally a monopoly is effected. This law of monopoly-formation, it is stated, is based on the fact that in business all men seek their own advantage, and, it is contended, in business the advantages are all on the side of concentration. The following are some of these advantages: (*a*) in the purchase of raw materials or of machinery, etc., the bigger the purchase the lower the price; (*b*) the larger the consignment of goods, the lower the freightage; (*c*) the larger the concern, the

* This is the way in which Marx conceived the shrinkage in the number of owners to be principally brought about. The more up-to-date socialists lay emphasis rather on voluntary aggregation of industries under stress of competition and the desire of traders to increase profits by lessening expenses.

† The reader should remember that we have now done with the question whether the small and very small firms tend to disappear. Our present discussion is whether amongst larger concerns there is a tendency to greater concentration.

smaller, relatively, are the fixed charges; the staff of employees, *e.g.* will relatively not be so great, advertising not so necessary; (*d*) the larger the revenue the higher the efficiency of the plant it is possible to acquire; (*e*) the greater the reserve of capital the longer it is possible to wait for more opportune and better markets; (*f*) a monopoly, whilst it can depress the price of raw material, can also inflate that of the manufactured article; (*g*) finally, some one firm is always sure to be stronger than the rest, and it cannot be an advantage to the weaker ones to stand up permanently against it—they must in the end succumb.* These arguments would seem to establish the view that industry is subject to certain forces making for unlimited concentration.

But though the existence of such a tendency is certain, nevertheless both reason and experience impel us to believe that in industry and commerce there are certain counter tendencies at work that check and hinder centralisation, *sometimes even leading to disintegration* in a hitherto unified business.

(*a*) The principal factor in the second or decentralising group of influences is psychological in character. Men are naturally possessed of a stubborn desire to retain their possessions in their own hands and not to relinquish them or entrust them to the care of another for any prospective advantage, however apparently certain. There is always risk and uncertainty in throwing in one's lot with others. The apparently most efficient partner often fails to come up to promise. In partnerships there are often divided and opposing interests. The man, therefore, who has put much of his own energies and savings into a concern is not easily induced to share it with another. He will prefer to keep it in his

* Although this last argument does not really fall within the terms of our discussion which refers rather to healthy, prosperous concerns than to others, still we are sure that some reference to the matter will not be disallowed by the reader.

own hands, even with the sacrifice of possible gain. But apart altogether from the danger inherent in amalgamation with others, it is certain that men of energy and enterprise will always prove to be natural enemies to concentration, unless, indeed, it be concentration under themselves. *Homo faber fortunae suae* is as true in industry as in any other branch of human activity. Even, therefore, if the temptation to amalgamation should ever arise, the sense of mastership and of creative power in the handling and development of one's own business will always serve amongst the best business men to counteract such tendencies, and to hinder the formation of common, as opposed to individual private firms; (*b*) efficiency and extent of business are often found to be in inverse ratio; (*c*) this is particularly true of cases in which profits depend on the intensity of the labour applied rather than upon the extent of the possessions owned; (*d*) where the work of a firm is marked by some special advantage or excellence there is generally no tendency towards amalgamation with other firms, except as a result of accident. These special excellences may arise from a variety of causes, such as the possession of a special patent; long-standing tradition in those finer kinds of work in which good instinctive judgment is required; some particular quality of soil or water; proximity to a mine, or port, or quarry; all these circumstances may act as an incentive to hinder concentration: (*e*) where the capital cost is small as in the tin industries of Wales, and where the raw materials can be purchased by one firm as cheaply as by another, any rise in prices or profits which a monopoly may bring must necessarily attract others into the market, and even the prospect of this occurring will act as a preventive of amalgamations and consequently of monopolies;* (*f*) finally, there is the possibility of active interference on the part of the community, which will never allow the crushing process to go beyond

* Levy, "Monopoly and Competition," p. 276.

a certain point. The vast unpopularity which trusts have already incurred shows that the populace are not going to acquiesce in total subjection to financier or set of financiers or to business bosses controlling the whole country. The love of liberty and independence which is one of the great obstacles to socialism has thus already done much to bar the process of complete unification on which socialists have counted as their chief source of hope for the final abolition of capitalism.

ARGUMENTS IN FAVOUR OF UNLIMITED CONCENTRATION ANSWERED

Our statement (given on p. 174) as to the advantages of the very large business, needs to be corrected in many ways in order to be brought into harmony with the facts. In the process of extending a business it is possible to reach a point where advantage ceases and disadvantage begins. Let us take these supposed advantages in order. *First*, large purchases, it is said, can be made at smaller prices. Now this is only generally true. As often as not the larger the purchase the higher the price that must be paid. It is easy enough to buy up a small plot of ground; but the man who wishes to buy up all the land in a district might have to pay a heavy price *per acre* for his purchase. And such a rise in price, where a monopoly is being established, may occur even in the case of commodities not limited in quantity as the land is. Professor Ely in his work, "Monopolies and Trusts," * narrates how a daring Chicago operator in attempting to capture the whole available market in a certain commodity was ruined by having the price raised on him during the operation of purchase. Again, a monopoly may force the producer of raw materials to sell at an extraordinarily low price, but only provided that the raw materials are not themselves in the hands of another monopoly. The multiplication of monopolies in allied businesses may harden prices as well as lowering them. *Secondly*, it is contended that the large consignments involve lower freightage. But this is true only for a very limited increase in the amount of the consignment. A man pays less per ton for a consignment of ten tons than for a consignment of one. But the

* p. 164. We are much indebted to Prof. Ely's work for much of the matter of this section.

rate per waggon on a railway is, as a rule, the same whether one sends twenty waggons or only two. *Thirdly*, there is the question of the fixed charges. It is certain that some of these must diminish or perhaps disappear with the formation of monopolies. The need of advertising and of travellers will certainly be less. In other respects it is found that the fixed charges may even increase with the size of the concern. The system of book-keeping becomes more complicated, larger, and more expensive as the business grows. Large businesses involve the payment of highly skilled managers who would not be required for separate smaller concerns. In the small businesses there are no directors' fees. Also, in the smaller concerns one man may be put to many tasks: if work is slack in one department he goes to another; whereas in large businesses all work is specialised, and, therefore, whole departments may be idle and still require to be kept fully staffed. Again, one of the chief fixed charges in any concern is that of "plant." In some cases, indeed, a single large plant can be worked more cheaply than many small ones. Fewer attendants, for instance, will be required. But in other respects the fixed charges remain the same. Thus, often the enlarging of a plant means the employment of twenty machines instead of ten, but the cost of wear and tear in each machine is the same in both cases. Sometimes even the enlargement of the plant involves the employment of more costly machinery. The cheap oil-engine used to generate electricity in a small establishment will not suffice even if enlarged to supply lighting to a town. Again, it is cheaper to light a large area than a small one. But a limit can be reached when the cost of transmission becomes excessive, and then the rule of the benefits of the more extended area fails to hold. On this whole question of the fixed charges, the argument has even been used,* that under certain conditions the law of diminishing returns may operate against the further extension of a particular business. We do not know whether this is generally true in case of extension by amalgamation. But we believe that it holds as regards the improved quality of the plant required where a business has grown beyond a certain point. In other words, a point may be reached in expenditure on machinery where the returns on capital outlay begin to diminish. *Fourthly*, it is not true that the greater the amount that is spent on

* Prof. Chapman, "Political Economy," p. 80. The argument is of course in our favour.

plant, the greater the efficiency. We soon reach the maximum of efficiency in any machine. A small machine sufficing for a small business may be quite as efficient as a large one used in greater concerns. *Fifthly*, it is true that the rich man can afford to wait for better opportunities, but there are limits to waiting, and limits to the usefulness of large capital in enabling one to wait. *Sixthly*, a monopolist cannot always, as we have already seen, depress the price at which raw material is purchased; and there is a limit to the extent to which he can inflate the selling price of manufactured articles. This limit is determined by the people's means and the dispensableness of the article. A small competing firm may obtain that maximum as well as the monopolist. *Seventhly*, it is only under quite abnormal conditions that monopolies and trusts come into being through the wholesale destruction of smaller businesses. It is only under the most abnormal conditions that men will be willing to engage in the almost suicidal race for victory which such destructive competition involves. The risk and uncertainty are too great at the start; the actual loss is such as could be borne only under abnormal economic conditions.

We may sum up by saying that there are operative in the world forces which promote and forces which retard concentration. Also there are departments in which some degree of monopoly may be effected, and departments in which monopoly is out of the question. "So far," writes Ely, "as we now see we have a large field belonging to monopoly; but outside of this field we have another in which under right conditions competition is a permanent social force." And Prof. Chapman writes: "It would be a mistake to draw the inference that competition has been so outflanked that it must yield in bulk to combination. All businesses are not suited to any degree of unified control, and while in one state of development or of trade conditions, an industry may lend itself to monopolisation, in another set of circumstances forces which bring about its disintegration may as surely be generated." It is, indeed, possible that in many trades the limits of centralisation have already been overstepped. In his work, "Trusts

in the United States," * Von Halle explains that it is not uncommon for industries that had become centralised to decentralise again for the greater economic advantage offered by the smaller system. We have, therefore, no difficulty in committing ourselves to the view that in the capitalist system there is no inherent and irresistible tendency to unlimited centralisation. Competition will always tend to continue as long as trade continues.

III. *Whatever may be the tendency to concentration in industry it is not in the direction of socialism, and will not facilitate the advent of socialism.*

Our proof of this proposition will be stated as briefly as possible. Let us suppose for a moment that the forces of centralisation exercise such exclusive or such a predominant control in the field of industry and commerce that centralisation must of necessity proceed to a maximum. What then? Is socialism inevitable, or is its advent, as each degree of centralisation is attained, facilitated to any serious or to any extent? There is not the slightest reason for thinking so. Between centralisation, in the sense in which it actually occurs in industry, and socialism, there is not only difference but opposition. Both, indeed, aim at effecting a greater degree of unity. But the "unities" at which they aim are very different. The unity which is now being effected by amalgamation in industries is a unity not of ownership but of management and action. That at which socialism aims is, above all things, unity of ownership. Under the socialist *régime* there will be no such thing as distinct, independent, individual ownership in capital. The State, the community, will be the universal owner. Let us see how ownership is affected by the process of centralisation now operating in industry—that process by which in the opinion of socialists the

* p. 141.

transition from individual to common ownership is every day brought nearer and rendered more certain. If all centralising operations consisted in the formation of immense trusts with but few owners then, no doubt, centralisation might gradually set up such a set of conditions that the buying out or violent extermination of owners by the community and the taking over of all capital by the State would be comparatively easy of accomplishment. But this is not the case. For the most part centralisation consists in the amalgamation of many large industries without any reduction in, and often with increase in the number of owners. In 1890 the firm of J. & S. Coats, of Paisley, was formed into a limited company with a capital of £5,750,000. The result was an increase in the number of owners, not decrease. Then began that series of amalgamations to which socialists appeal as proof that individual capital is being slowly eliminated, that there is constant diminution of the "magnates of capital." * After absorbing Kerr & Co., of Paisley, in 1895, an amalgamation was negotiated in 1896 with three of their chief rivals, Clarke & Co., of Paisley; Chadwick & Co., of Bolton; James Brook & Co., of Milthan. For this purpose £4,000,000 of fresh capital was raised.† Here is a case of amalgamation of many firms into one. It is one of the standard cases appealed to by socialists. What is effected, however, is unity of management, not of ownership. The number of owners is not decreased. In December, 1897, the English Sewing Cotton Co., to which also socialists make constant reference, was floated, consisting of an amalgamation of fifteen firms. Fifteen firms were turned into one, but the number of owners was, again, not decreased. The Bradford Dyers' Association was formed in 1898, and made to embrace twenty-two firms with a capital of £4,500,000. It had for a long time practically a monopoly of the dyeing

* The words are those of Marx.
† *Contemporary Review*, June, 1899.

business in England, but its former twenty-two sets of owners remain.

The absurdity of quoting large newly formed companies as instances of phenomenal centralisation, and as clear proof of the irresistible approach of public in lieu of private individual ownership will easily be seen when we consider the number of shareholders that own between them the various trusts on which socialists build their case for socialism. Bernstein mentions the English "Sewing Thread Trust" as counting no less than 12,300 shareholders; the trust of Spinners of fine Cotton comprises 5,324 shareholders; the shareholders of the Manchester Canal Co. number 40,000; those of T. Lipton number 74,262; Spiers and Pond, of London, has its 4,560 shareholders; five businesses * (Guinness, Bass, etc.) are in the hands of 27,000 shareholders. Railways often secure a monopoly of the carrying trade in a particular area. But they will have thousands of shareholders. In Oldham † there are numerous co-operative spinning mills, owned entirely by the workmen. There is a capital of close on £8,000,000. It is stated that a thousand operatives in those mills are worth from £1,000 to £2,000 each. We should like to know what the Oldham spinners would say if they were told that by adopting the principle of co-operation they were proving themselves most generous to the public in implicitly handing over or preparing the way for the future handing over of all their property to the State.

The formation of large companies then is not to be regarded as proof of gradual shrinkage in the number of owners. On the contrary, company-formation often means disintegration and increase in the number of owners instead of concentration and shrinkage. Large businesses often become too big for management by the one or two individuals who gave them birth. They

* Date of Bernstein's work, 1899.
† Rae, "Contemporary Socialism," p. 338.

are then turned into companies with many owners. Even after the formation of such companies the number of shareholders generally continues to grow, sometimes with issue of new capital, sometimes without. Taking twelve companies at random, but representing completely different kinds of business, Viscount Goschen * shows that in the years 1876–86 the number of shareholders increased from 11,667 to 20,083. We have no doubt that if a census were taken in any country now, and compared with the tables of ten years ago, it would be found that the number of owners of capital had increased enormously, not only absolutely, but in proportion to increase in population during that period; and they would be found so to have increased even if the number of firms had decreased in either or both of the ways mentioned.

There is another point that we cannot afford to lose sight of in this connection. The essence of capitalism lies not so much in the fact that there are many owners as in the fact that owners are free to save and invest their savings as they will. Even under socialism men could own what they receive from the State, but they could not invest as they will what they receive and own. Now, even though a law of concentration in industry such as Marx describes really existed, it could in no wise be regarded as hastening the advance of socialism; for, even if all industries were concentrated in one huge trust, every member would be free to save and to buy more shares, and to draw more profits or dividends from his investments. Such a form of community might or might not be an improvement on the present condition of things, but it would be very far removed from socialism.

In two ways socialists might attempt to claim that centralisation must of necessity lead to socialism.

* "Essays and Addresses on Economic Questions," p. 257.

First, under the influence of concentrative laws our present system might *develop* into socialism. But this cannot be the case. Centralisation is in the direction rather of increase in the number of private owners than decrease; and, as we have just seen, centralisation still leaves intact the right of free private investment which socialism totally disallows. Secondly, it might be claimed that as the number of capitalist undertakings diminishes they will the more easily succumb to *violent expropriation* when the time for violent action arrives. But this cannot happen unless the number of owners decreases also; and we have seen that such is not the case. What is more, the proletariat, as we have also seen, is itself fast coming to own large amounts of company capital. Thousands and thousands of the proletariat in England, America, France, and Germany are capitalists on a small scale. Should expropriation ever be attempted, it will be found that this latter body of capitalists will be in a position to offer to their expropriators an even firmer and more effective, because better organised, resistance than would be possible under the older system of isolated individual capitalism.

CHAPTER VI

SOCIALISM

THE MARXIAN ARGUMENTS—(*Continued*)

NOT only according to Marx is private ownership in capital * certain to disappear because of its own inherent tendency to greater and greater concentration, the effect of which is gradually to eliminate the competitive element from commerce and industry—it is also bound to disappear because of certain evils resident in private capitalism, the effect of which evils must in time be to move the proletariat irresistibly to combine and organise for its destruction. The first of these evils Marx discusses under the heading, "the surplus-value of labour"; others are: the necessity of crises under capitalism, the capitalist exploitation of labour, the "reserve army" of labour or increased unemployment, and, finally, the "iron law of wages." The present chapter is devoted to a discussion of these five arguments.

THE SURPLUS-VALUE OF LABOUR

The argument based on "surplus-value" holds the chief place in Marx's celebrated indictment of capitalism. Briefly it is as follows:—all wealth is produced by labour. By labour here is meant, not any form of human effort,

* We wish, at the very beginning of this chapter, to point out that our defence of "capitalism" is a defence of the private ownership of the means of production. We have no desire to bolster up capitalism in the sense in which that word is often at present understood, viz. the possession of the means of production by a *few* rich men, and the exclusion of all others from those means. We maintain that the greater the number of persons in possession of the means of production, and particularly the land, the better for all.

but *manual* labour, the labour of the working classes. The clothes we wear, the food we eat, the houses in which we live, are all products of labour. Labour tills the soil, prepares it, drains it, sows the seed and reaps the harvest. Labour extracts the metallic ore from the earth, purifies it, works up the raw materials of machinery, puts the parts together, and works the machine. It is labour that sows the flax, spins the yarn, furnishes the finished garment. There is nothing used or produced in industry that is not directly or indirectly a result of labour, and of labour exclusively. Labour, then, is the sole factor in the production of wealth.

Now a man, Marx continues, has a right to what he himself produces, and, therefore, all the products of industry belong rightfully to labour. Thus there is not a pennyworth of value produced in the industrial world that does not belong by the most original and natural of all titles of ownership to the working classes. Do the working classes receive this value? Far from it. That is not what the labouring classes are employed for. The labourer is employed to make money for the capitalist; and he makes money for the capitalist by being himself deprived of the major portion of what he produces. The labourer receives a bare subsistence wage. In two or three days he can, and does produce goods to the value of that subsistence wage. The rest of the week's produce goes to the capitalist. It is to this remainder that Marx gives the name—the "surplus-value" of labour. The capitalist system, he submits, since it not only allows but is intrinsically dependent on the creation of surplus-value, is unjust and intolerable.*

* Marx also maintains that labour is the *measure* of all value. It is not necessary for us here to discuss the Marxian theory of value, beyond saying that no modern writer would maintain that labour is the sole or the fundamental determinant of value. The fundamental determinant of value consists in the capacity of an object for satisfying human needs; value is measured by the utilities of an object, and its utilities mean its capacity for satisfying needs—(See Aristotle, "Nich. Ethics," V. 5). Modern writers express the same doctrine when they say that value-in-exchange is measured by marginal

Our criticism of this theory of surplus-value will consist in establishing the following proposition :—

Labour in the Marxian sense, i.e. *manual labour, is not the sole or the chief factor in the production of modern wealth.*

Putting aside certain kinds of wealth which nobody regards as products of mere manual labour, *e.g.* paintings and statuary, and confining our attention to what is known as industrial wealth proper, such as food, clothing, and the ordinary articles of commerce, we are inclined to assent to the Marxian theory so far as to admit that before the rise of capitalism, the wealth of the world was *in the main* the result of manual labour. It was not wholly outside the capacity of the ordinary workman to devise the means of production then at his disposal, *e.g.* the hand-loom and the wooden plough, and it certainly was part of his province to fashion and to use those instruments. The labourer made the plough and ploughed the land. The labourer constructed the hand-loom, produced the cloth, and furnished the finished garment. Labour, skilled and unskilled, was the chief factor in production in those ancient days.*

But labour is not the chief factor of production now. Labour cannot account for the enormous productiveness of modern industry, and, therefore, it is not the sole or the chief factor in the production of wealth. Labour, indeed, is necessary for production now as always; but another factor has now to be considered to which,

utility, *i.e.* a man will usually buy at any level that will afford him at least a minimum of utility. It is the same with selling.

Labour, we admit, is one of the most important of all the determinants of value, for labour is the chief element in cost of production, and cost of production is one of the chief factors in determining the level at which it is useful to buy or sell. But labour is not the only determinant of value; there is, for instance, also the price of the raw materials, a price which is not wholly determined by the labour of producing or extracting these materials.

* It does not follow that labour had a right to all the wealth of the world in ancient times. Labour, as we have already seen (p. 143), is only one out of many titles of ownership.

much more than to labour, the effectiveness of modern industry is directly attributable. To this second factor is given the name "ability"—a name which has been specially designed to signify those particular talents and powers that are employed in the *invention* of machinery, in the *creation* and *management* of great industrial undertakings, and in the *direction* of labour, which talents and powers, all will agree, are quite distinct both in kind and degree from any form of capacity which the manual worker is ever called upon to employ.*

That labour in the Marxian sense, *i.e.* manual labour, does not account for the enormous productiveness of modern industry may be established in two ways, first, by showing what labour itself without the help of the modern inventor and director of industry is capable of achieving (we shall show that it falls far short of the productiveness of modern industry): secondly, by analysing the factors engaged in modern industry, and showing how small is the part played by labour in comparison with the other elements contributing to the result. In this way we shall disprove the title of labour to be the sole or the chief factor in the production of modern wealth.

First, it is possible to determine the amount of wealth which *labour as such, labour operating by itself,* is capable of producing from the degree of productiveness that attached to labour in early times before the rise of modern machinery,† or that attaches to it in modern times in countries that have not yet adopted the use of modern machinery. In both cases the amount of wealth which labour shows itself capable of producing is exceedingly small in comparison with the wealth which is con-

* The labourer may possess talents in every way equal to those of his employer. Our point here is that these are not the talents which are requisitioned and applied in the work which the labourer actually accomplishes.

† We shall show presently that modern machinery is not itself a product of mere labour.

tinually being poured out of our factories where to a large extent human hands are replaced by the modern machine.

In the Middle Ages, when the implements of labour were exceedingly simple, so simple that they could be devised and fashioned by labour itself, the output of labour *per* head of the labouring population was in point of value a very small fraction of the wealth which a single operative is capable of producing to-day. Clothes, shoes, building materials—how slowly and patiently these were produced by the labourer's unaided hands even two hundred years ago. And of the things that were produced at that period how small the variety in comparison with the immense and varied productivity of labour to-day. Even in agriculture, where the scale of production in the old and the new period does not differ so widely as in industry proper, the difference in output in the two periods is enormous. In the Middle Ages a single farmer with, say, four or five helpers simply could not undertake the work which a farmer with the same amount of help will freely undertake to-day. The present-day implements for clearing and preparing the land, for binding, reaping, threshing the corn, and for despatching the gathered harvest did not exist in those far-off days. And what was the output of agriculture then? It was roughly the amount that sufficed to keep a man and his family from poverty and want. It was what corresponded to what is now spoken of as the sustenance-wage. There are even now countries where until very recently the implements used in agriculture were the implements of two hundred years ago, the implements which labour itself sufficed to provide, and the agricultural output in these countries was not more than the output of agriculture in the earlier period. A signal instance is provided for us by the peasants of the Palatinate to whose industry, thrift, unalterable patience, and courage John Stuart Mill bears such eloquent and striking testimony. These peasant

proprietors, he writes, labour most intensely, they "plod on from day to day, and year to year, the most patient, untirable, and persevering of animals." "Every man has his house, his orchard, his road-side trees, commonly so heavy with fruit that he is obliged to secure them all ways or they would be torn to pieces." Could any condition be more favourable to securing for labour, at least in the domain of agriculture, the very highest degree of productiveness possible to it? And yet the net result is given by Mill—"they have no actual want"; in other words, they produce just what the household required, the bare means of subsistence. And this is what, without modern machinery, manual labour seems capable of producing, not in agriculture only, but in all other departments of industry also, just what, when turned into money, will suffice to maintain a man's own home.

Compare this with what a modern workman can produce with the aid of machinery. Taking two periods, separated by the comparatively short space of seventy-one years, a modern authority * writes that in 1840 a single workman could perform "in spinning cotton an amount of work equivalent to that of 320 men before 1769." Two centuries ago one pair of hands could scarcely have turned out more than one pair of stockings in the day. To-day a single operative could produce in a rough way twenty pair or more. Then if to these is added the enormous quantities of material wealth that a comparatively small number of hands is daily turning out of the workshops of England, steel works, iron works, printing works, and all the other great concerns of the nation, we can only wonder whether there is any proportion whatever between the labour of olden days, and what it produced, and the productiveness of the labour of to-day. In this, of course, we must not allow our imaginations to mislead us. We said that in a particular kind of work the output per head of the

* Nicholson, "The Effect of Machinery on Wages," ch. 2.

labouring population was three hundred times that of a couple of centuries before. But the general disproportion between the productiveness of industry under the old and the new conditions respectively is not nearly so great as this. Besides the spinners of cotton in modern times there must be also men to make the modern machines, to set up the machines, to build the factories; and so the productiveness per head of the labouring population will be far less than the figures given above might lead us to expect. Statisticians, however, comparing the all-round productiveness per head of the industrial population at the end of the seventeenth and nineteenth centuries respectively, represent the two as standing in the ratio of seven to thirty-three; * it is a ratio which is widening with every year that passes; and it suffices to show how groundless is the claim made by socialist writers that labour is not only the chief but the sole factor in the production of modern wealth. If the figures of the statisticians are true it is clear that labour operating by itself could not account for more than a fifth of the total productiveness of the industry of these present days.

But, it will be said, is it not labour that has produced the modern machine and, therefore, is not labour to be credited with all the extended productiveness of industry in the modern as compared with the earlier period? Our answer is that labour as such is to be credited with no part of the increased productiveness of modern industry, for labour did not produce the modern machine. The workmen certainly set up the machine, but always according to the plans of, and, therefore, under the guidance of, the inventor. The machine, in its first origin, is the work not of labour but of the mental ability of the inventor. Neither does mere labour produce the materials of which the machine is made. These also are the products of many inventive minds, distinct from labour. To use an expression of Mr. Mallock's—the

* Mallock, "Critical Examination of Socialism," ch. 2.

materials of which machines are made are not so much crystallised labour as " crystallised mechanics, crystallised chemistry, crystallised mathematics, in short, crystallised intellect, knowledge, imagination, and executive capacity of kinds which hardly exist in a dozen minds out of a million."

Labour, *as such*, then, could never have put the world in possession of the great implements of industry through which wealth is produced to-day. Indeed, the faculties engaged in the designing and production of these appliances are of a kind wholly different from that of labour. Through many centuries labour did direct itself to improve upon the implements supplied to it by each generation, and the improvements effected were negligible in kind and amount. Right up to the end of the eighteenth century the instruments used in production showed no tendency to improve. " Until the beginning of our century," writes Le Bon, " the instruments of industry had scarcely changed for a thousand years; they were, in fact, identical as regards their essential parts with the appliances which figure in the interior of the Egyptian tombs four thousand years old." Labour could not produce a specifically new kind of appliance because a new faculty was required for such production. Quite suddenly, at the end of the eighteenth century, what was evidently a new factor, distinct altogether from labour, became operative in industry; a new world of industry arose, the actuating spirit of industry was radically altered, and at a bound, productiveness increased in innumerable departments twenty, thirty, a hundred times. This new factor was none other than the ability of the inventor and of the great masters of industry, ability which until that time had been employed in other spheres than industry, and which now appeared for the first time as a powerful source of productiveness in that sphere.

But all that we have said on the inability of labour to devise or furnish the world with the machinery that

has made modern industry the great new departure that it is, in comparison with what went before, will be confirmed and illustrated from the argument now to follow.*

Secondly, we said that an examination of any one or a few of those processes by which industry nowadays achieves its results will suffice to show that labour is not the sole or the chief factor in modern production. By the expenditure of a comparatively small amount of energy the modern workman achieves results altogether out of proportion to the energy which he personally expends in his work. The reason is that by the expenditure of a small amount of energy the workman releases other immense supplies and kinds of energy which through the ingenuity of the inventor have been stored up in the machine, and, therefore, it is to the machine principally, or to its inventor, and not to labour that we must attribute the immensity of the result which finally appears. This is why the same pair of hands that formerly could spin a certain amount of cotton in the day now produces 300 times as much. The worker is not the chief producer. The chief producer is the machine or rather the inventor of the machine. The work of the skilled labourer consists, for the most part, in controlling and watching the machine, in supplying it with materials, and removing products. The work of production itself is in all machines very largely, and in many almost wholly, an automatic process, accomplished by the machine, through the agency of its own inner forces. Of many of the processes that go on under his hand the workman has often no understanding, and even if he does happen to understand, such knowledge is not requisitioned in the accomplishment of his task; it is a mere accident without a bearing on the work he does. In nearly every kind

* For the argument that precedes we are almost wholly indebted to Mr. Mallock's delightful work: "A Critical Examination of Socialism."

of machinery there are utilised and applied a number of principles in Chemistry, in Mechanics, and in Mathematics, which lie far beyond the intelligence, or at all events, the attainments of the most skilled workman. Between his labour, therefore, and the completed work regarded as embodying those principles there is a huge disproportion which disentitles the labourer to be recognised as the sole or even the chief factor in those productive processes that he conducts and controls.

And this disproportion is found to increase and widen as industry progresses. The workman is becoming more and more of an automaton in the sense of acting under directions from others—and this because of his increasing inability to understand the principles embodied in modern machinery. New principles are being discovered and utilised every day that pass entirely beyond his comprehension. Not one workman in a thousand understands even a small fraction of the principles applied, and the distribution of the forces utilised, in a modern electric machine. The workman knows how to couple up the parts, to start the machine, and to stop it. But in the devising of the machine there is involved the highest technical and mathematical knowledge such as most workmen have neither the means nor the opportunity of acquiring. What folly in the light of these facts to claim that the labour of the workman is the so e or even the chief factor in present-day production !

The third factor in modern production other than labour.

Our position as developed in the argument just completed is that labour is not the sole factor in production, that to ability also is to be attributed a large share in the productiveness of *modern* industry. It is no part of our theory, however, that ability and labour are the only factors concerned in production, or that whatever is not produced by labour is necessarily the work of ability and belongs to the capitalist. There is a third

factor to be enumerated, without which neither ability nor labour could have reached their present effectiveness, and which is itself a product neither of labour nor of ability. We refer to all those natural stores of energy which for centuries lay unutilised beneath the earth* in our coal- and oil-mines, and which it was reserved for the people of our time to utilise with such stupendous effect in every department of production. These natural sources of energy are not the creation either of ability or of labour or of both combined. They are an independent factor of production, and any attempt to ignore them must necessarily lead to fallacious conclusions concerning the rights of labour and ability respectively. Thus Mr. Mallock, in his work, "A Critical Examination of Socialism," gives a computation of the respective claims of ability on the one hand, as representing capital, and labour on the other, which, by omitting all mention of this third factor, leads to a conclusion which is manifestly at variance with justice and common sense. Estimating, just as we have done (our method has been borrowed from him), the productive capacity of labour from the amount that labour was able to produce before the rise of modern machinery, which, as we saw, was not much above the mere subsistence wage, he then evolves the argument that, labour and ability being the only factors in production, all that is left of the products of industry after the labourer has received his subsistence wage belongs to ability alone. If more is given to the labourer, and on certain *extrinsic* titles, he tells us, more ought to be given, it is to be regarded as "a gift to the many from the few." †

* Land was always a factor of production. But *modern* industry is chiefly characterised by the utilisation of the natural stores of energy referred to in our text.

† *op. cit.* p. 282. The only titles on which, according to Mr. Mallock, the capitalist is bound to give more than a subsistence wage to the labourer are the following: first, something ought to be given to the labourer as compensation for loss of freedom in placing himself in the hands of the capitalist; secondly, as a precaution of prudence, it is well to give the labourer an additional sum to impress him with the benefits of the wages system—(ch. 16).

This conclusion, we have said, is opposed to justice. The natural sources of energy that were opened up at the beginning of the capitalist period are surely to be credited with some portion of the total productiveness of industry, and since they have been produced neither by ability nor by labour we cannot say, *a priori*, that this portion of the total output of industry belongs exclusively either to labour or to ability. Any general or abstract claim, therefore, made without further examination of the question, "who owns these sources of production?" that, whatever the labourer receives above his subsistence wage is of necessity to be regarded as a gift to the many from the few, is preposterous and unjust.*

The importance of this third factor in production can scarcely be overrated. Some idea of its immensity may be gained from the following computation made by a very reliable authority. "For the United States alone," writes M. Le Bon,† "the power extracted from coal is valued at the equivalent of thirteen million men, and fifty-three million horses." "Admitting," this author proceeds, "the absurd hypothesis of the possibility of obtaining so many men and animals, the expense of their keep would be £2,200,000,000 instead of the £100,000,000 or so which represents the work executed by machine-motors." It must be admitted, therefore, that a great part of the present wealth of the world is to be attributed to these sources of natural energy as distinct from either labour or ability.

The question now arises—to whom does that portion of the fruits of industry which represents the value of these natural sources of production as distinct from labour and ability belong in justice? Our answer is—it belongs to that person or body of persons to whom the natural

* Moreover in our discussion on the wages-contract (p. 343) it will be shown that the wage-earner has a right in justice, arising out of the nature of the wages-contract itself, to more than the bare subsistence wage.

† "The Psychology of Socialism," p. 215.

sources themselves belong. Ownership of the sources always brings with it ownership of the fruits as well. If, therefore, the natural sources, *i.e.* principally the coal- and oil-mines, are not owned by any private individual, if they are the property of the nation at large, the fruits of them belong to the nation at large and they should be utilised for the benefit of all. If, on the other hand, the coal- and oil-mines belong to private owners, to the capitalists, then, provided that they are justly owned, and that a just remuneration is given to those who by their labour render these sources of wealth available for use, the values corresponding to them are to be regarded as belonging by right to those persons to whom the mines themselves belong.

But on what title, it may be asked, can the things that are produced by God alone be taken over by a few individuals as their private property to the exclusion of millions of other persons for whose benefit, equally with that of the few, these great natural sources of wealth were originally provided? This is a question which we cannot fully consider at present since it raises the problem of the ownership of land and of natural wealth generally —a problem which will be examined with special reference to the question of the ownership of mines, in an appendix to a subsequent chapter. At present all that it is possible to say is this—coal- and oil-mines may be owned by individuals on perfectly valid titles; what is more, unless these mines had in the past been taken over by individual persons as their own private property they could never have been made available for public use. Coal-mines are not to be regarded as natural storehouses in which ready-made wealth is contained in enormous quantities, wealth which any person might extract who cared to do so, without expenditure or financial risk or trouble of any kind. As a matter of fact, enormous sums of money have to be spent on coal-mines before they can become a source of profit, and this expenditure is always attended with very grave risk of complete

loss. This we shall establish by reference to definite facts and figures in a later chapter. The conclusion, however, which we wish to emphasise now is that the natural sources of wealth may belong to private owners, and that in such cases the owners have a perfect right to the fruits. At present in England the coal-mines are the property of private capitalists; this (and not the supposition that the whole of what is produced by industry over and above the subsistence wage must necessarily have been produced by ability) is the title on which that portion of the national wealth which is attributable to the coal-mines belongs to the capitalist class in England. There are countries, however, where these natural sources are not owned by private capitalists, and there the private capitalist can lay no claim to the portion of the national wealth which is due to these natural sources, but only to the products of his own work and ability.*

* We think that a case might be made showing that even in England workmen have a right to some of the products due to the natural sources in the following manner: The mines in a country like England go with the land, so that whoever owns the land owns the mines also. Now this right to the underlands following ownership of the surface or overland, is not of natural but of civil authority only, as we have already seen (p. 141). Moreover, we saw that the civil law, though it acted validly, did not act wisely in conferring this right. There is no reason in the world why a man who owns the surface should be owner also of everything beneath the surface. If, therefore, the State is to be regarded as reasonable it must be supposed, when conferring this ownership of the underlands, to expect of owners, should these underlands prove to be immensely more valuable than the surface lands to which they were supposed to be accessory, that some of these immense and unexpected values, values which the mine-owner did not himself produce, should go to the nation, and in particular to the working classes who take such a prominent part in production.

We offer this argument as a suggestion merely. Whether or not it is valid, and whether, therefore, it proves that what the workman receives over and above the subsistence wage is *not* a gift to the many from the few, we leave to the reader to say. But in any case that this surplusage is not of the nature of a gift, but is due to the workman in justice, can also be established on other grounds (p. 343). The workman has a right in justice to much more than the subsistence wage, as will be proved in a later chapter.

A DIFFICULTY

It is supposed in the foregoing line of reasoning, in which we claim that labour is not the sole source of modern wealth since the ability of the capitalist is also a source, that the capitalist is necessarily a man of ability, whereas we know that many capitalists either have no ability at all, or fail to exercise it, living away from their business and leaving the conduct of it to mere salaried officials. How, it is asked, can such men be said to have a right to the wealth that ability produces?

Reply.—In answer to this important difficulty we wish, first of all, to call the reader's attention to a matter which has already been explained but which it is necessary to repeat in the present connection. When we contrasted the functions of the labourer and the inventor by representing one as spending material energy and the other as exercising ability it was no part of our theory that workmen had no ability or that their natural intellectual faculties were of a lower order than those of other men. Our point was that, whatever might be the natural intellectual acumen of workmen, the powers that were called into play and that were required for the successful accomplishment of the manual labourer's task were of a kind wholly different from those employed in the work of invention and administration. That, and not any absurd prepossession in regard to the aptitudes of the labouring classes, was our reason for placing *his* work on the one side as an exercise of labour alone, and on the other side the factor which we spoke of as ability.

But now the question arises—To whom is this ability which we contrast so markedly with the labour of the workman supposed to belong? For purposes of the present discussion it really was not necessary to determine its owner in any way. Our thesis being that labour is not the sole factor in the production of wealth it is obvious that in elucidating this thesis it was not necessary to do more than to show that labour could lay no claim to whatever portion of the fruits of industry is attributable to this second factor. That position, at least, we hope has been fully established in our recent discussion.

But it is possible also to return some general answer to the question to whom the ability which we have spoken of as the second chief factor in production belongs and to whom, therefore, the fruits of this ability should be given. First, there is the ability of the inventor—the man who devises

the machine. To him must be awarded a portion of the total product of industry proportioned to the value of his invention. But this right of the inventor is not to be regarded as prejudicing in any way another right which the inventor possesses in common with every human being, viz. his right freely to dispose of that which is his own. And it is the exercise of his full freedom in this manner by the inventor that first brings us into contact with the capitalist as a rival claimant with labour of the fruits of industry. The inventor may retain his invention in his own hands and work it himself, employing men to aid him in conducting his business. The inventor is then a capitalist. Or the inventor may sell his machine to another and then that other becomes the capitalist and being owner of the machine has a full right to the fruits of the abilities which are enshrined in that machine, that is, to all that the machine produces, *minus* a fair wage paid to the labourer. But the capitalist is more than the mere owner of a machine. Machinery requires other plant besides itself before it can be successfully worked. Buildings have to be erected, the machinery has to be put into position, power has to be supplied, raw materials have to be procured. All this the capitalist provides at his own expense, and, thereby, his special title to a portion of the products of industry distinct from that given to labour becomes wider and more pronounced.

But, besides the ability of the inventor, there exists also another kind of ability which is of immense importance for success in the industrial world, viz. the ability of the administrator or of the director of industry. Without administrative ability there could be no such thing as success in an industrial concern. Administrative ability is a term of the very widest connotation. It includes not merely ability to direct the labourers in the work of production, but ability to gauge the markets, to proportion cost of production to expected prices, and even to create markets where they do not exist. It includes the faculty of rapidly estimating risks, and also the right degree of caution and daring in facing and overcoming them. These are all parts of the character that go to make a successful business man, and they are all included under what is usually spoken of as administrative ability. The question now arises are capitalists or the employers of labour men of ability in this sense? Do they really exercise the functions of administrator, and have they, therefore, a right not only to that portion of the fruits of industry which is attributable to the machinery

and to plant generally, but to another portion also answering to their special work of administration?

Our answer is that most capitalists do actually direct the work of the institutions which they set up and own. They, the owners, the chief organisers, will not, indeed, embroil themselves in a too-detailed surveillance. The details of organisation must be left to smaller men. "The commercial man," writes a well-known modern authority,* "whose time is taken up with the details of his business is doomed to failure." But the broader work of direction is, as a rule, undertaken by owners in every country.

If, however, an owner should decide to leave the work, even of supreme direction, to another and to pay him for his work (and in some cases capitalists are, from the nature of the case, compelled to do so; it would be impossible, for instance, for all railway shareholders, who being shareholders are also all capitalists, to undertake direction) then it is hard to see that in doing so he interferes in any way with the rights of workmen. He who owns a business has a perfect right to direct it in any way he pleases whether personally or through others. If he personally directs the business he is entitled to all the profits due to successful direction. If he exercises that function through another he must pay that other a just salary. But to whomsoever the fruits due to the exercise of administrative ability are finally awarded, they are not in justice the property of manual labour.†

Capitalism and Industrial Crises

Crises are certain temporary or short-lived, though acute, bad periods of trade extending over a wide area of a nation's commercial life, involving grave financial loss to a large number of producers, the destruction of a large number of concerns, and, as a consequence, a grave diminution of employment in many departments of trade. Crises are of a temporary character, that is, they do not involve the permanent disappearance of trade. On the other hand, they are both acute and

* Macrosty, *Contemporary Review*, June, 1899.

† Our section on the wages-contract might be usefully read in conjunction with this whole argument.

widespread, and, therefore, they differ essentially from ordinary trade depressions. Their effects are most keenly felt amongst the poor, who are thrown out of employment in thousands and can find no avenue of industry open to them—the depression that follows upon a crisis being, as we said, always widespread, and extending to nearly every department of trade.

Now it is contended by Marx and his followers that all crises are attributable, directly or indirectly, to capitalism as their ultimate ground and cause. Crises, they say, are inseparable from capitalism, and under the system of capitalism they tend to recur, not irregularly and, as it were, accidentally, but at regular intervals and, therefore, according to some law inherent in capitalism. Their recurrent character is thus described by Engels * :—

"The ever increasing perfectability of modern machinery is by the anarchy of social production turned into a compulsory law that forces the individual industrial capitalist always to improve machinery, always to increase its productive force. . . . The extension of the markets cannot keep pace with the extension of production. The collision becomes inevitable; and, as this cannot produce any real solution as long as it does not break in pieces, the collisions become periodic.

As a matter of fact, since 1825, when the first general crisis broke out, the whole industrial and commercial world, production and exchange among all civilised peoples and their more or less barbaric hangers-on, are thrown out of joint about once every ten years. Commerce is at a standstill, the markets are glutted, products accumulate, as multitudinous as they are unsaleable, hard cash disappears, credit vanishes, factories are closed, the mass of the workers are in want of the means of subsistence because they have produced too much of the means of subsistence! bankruptcy follows upon bankruptcy, execution upon execution. The stagnation lasts for years, productive forces and products are wasted and destroyed wholesale, until the accumulated mass of commodities finally filters off, more or less depreciated

* "Socialism, Utopian and Scientific," p. 63.

in value, until production and exchange gradually begin to move again. Little by little the pace quickens. It becomes a trot. The industrial trot breaks into a canter, the canter in turn grows into the headlong gallop of a perfect steeplechase of industry, commercial credit, and speculation ; which, finally, after breakneck leaps, ends where it began in the ditch of a crisis, and so over again."

From this passage we may gain some imperfect idea of the nature and terrible effects of crises. The author just quoted apparently assumes that crises are all caused by over-production. Whether there are other factors that also may result in crises will be seen presently. But whatever may be the cause of crises, it is certain that they are a very great evil, and that no pains should be spared to bring about their complete elimination from industry. But, though crises are evils of such gravity as to command the serious attention of economists and moralists, nevertheless we must not allow ourselves to be drawn away by a too detailed consideration of them from the main purpose of the present chapters, which are concerned only with certain supposed defects of capitalism. It will, indeed, be found impossible in considering this, our main problem, to avoid saying something on the causes of crises ; but anything in the way of a detailed scientific investigation of them, or of the supposed law of their periodic recurrence, lies altogether outside our work.

Our discussion of crises, which will be brief, will consist of two parts. First, we shall enquire whether crises are necessary under capitalism ; then, secondly, we shall discuss the problem whether they are wholly avoidable under socialism.

Are crises necessary under Capitalism ?

Before attempting to answer this question we may be allowed to attempt a brief enumeration of the main causes of crises. The first and commonest cause of

crises is over-production.* The producer makes a false estimate as to future demands. Goods produced at an immense cost happen not to be in demand, and are either unsaleable, or are sold at a very great loss. A large number of firms are similarly and simultaneously hit. The banks are run on. Credit is stopped. Production ceases. Widespread unemployment ensues. Again, crises are brought about by over-capitalising † and rash speculation. Immense sums of money are put into fruitless ventures with results similar to those just described. Bad harvests, too, are an obvious cause of crises. Wide-extended failure here often involves failure of the materials of production. Worse still, consumers have not the money to purchase what is produced. If previous harvests have been good, production may have for some years been on a very large scale, big prices being counted upon. Producers, therefore, lose heavily and are in straits for money. The banks have not the money to lend. There is failure all round. Again, new inventions, by rendering existing systems antiquated, may bring about the ruin of many old-established firms. In time, of course, each new invention should succeed in bringing other subordinate businesses into existence, and by cheapening articles increase the market-demand for them. But the process of adjustment of the various industrial forces, one to another, is often slow, and in the meantime all the conditions of a crisis may realise themselves. Large

* According to Hobson ("Evol. of Mod. Capit.," ch. xi.) crises are caused rather by under-consumption and over-saving than by over-production. He speaks of under-consumption as the "root-evil of depressed trade." We may, however, regard under-consumption and over-production as correlative terms. But Hobson usefully points out that over-production does not always consist in a "glut of goods." Often, when it is found that demand has failed, supply may be instantly checked; but then you are left with "idle machinery, closed factories, unworked mines, unused ships and railway trucks." In other words over-production is often of the nature of over-capitalisation.

† See Seligman, "Principles of Economics," p. 586, who maintains that all crises are due to this as their chief cause.

gold discoveries, also, may, by giving an impetus to unwise speculation, help to produce crises. War, pestilence, and any great political disturbance, by giving a shock to credit, may lay the foundations of crises. They may be brought about also by any cause that affects the ultimate reserves—the real foundations of the credit system, any sudden and extensive drain, for instance, on the gold reserve of a country.*

The main causes of crises being now considered, we may proceed to answer the question—whether crises are inseparable from capitalism? Our answer is that, under capitalism, crises must always be reckoned upon as a possible contingency, since at least many of the causes that produce crises are ineradicable from that system. Nevertheless, not only is it possible to a large extent to remove or neutralise those causes, but this has actually been done, so that in any well organised industrial country a serious or prolonged crises is becoming less and less possible each decade of years, and, in England at all events, may even now be regarded as no more than a remote contingency.

That the causes of crises must continue to remain under capitalism is obvious. As long as producers aim at big profits and at the same time are not infallible in predicting the market-demand, there will remain the danger of over-production. For the same reason over-capitalisation and gambling on the stock exchange must always be reckoned on as a possibility. Eager and foolish investment will always remain as long as the lust for wealth remains and men have money to gamble with. Bad harvests, wars, new inventions, and discoveries of gold must also remain possibilities. Hence, since many of the causes which produce crises must continue to remain with us, crises must also continue

* Other causes, real and alleged, will be considered in a note at the end of the present section. A good account of the causes of crises is to be found in Nicholson, "Principles of Political Economy," Vol. II.

to be reckoned amongst the number of possible human ills.*

Nevertheless these causes are not without their preventives and their remedies. The first is better organisation in trade. As Seligman points out: † "like some of the other economic evils of the nineteenth century financial crises seem to be peculiar to the infancy of the factory system." Better organisation brings the centres and channels of commerce closer together, adjustment under changing conditions becomes easier, relief is closer at hand, labour becomes more mobile, employment is more easily found. Improved organisation of our commercial system, therefore, must, of a certainty, reduce the probability of the occurrence of crises. It was, says Engels himself, owing to the fact that the Suez Canal brought America and India by seventy to ninety per cent. nearer to the industrial countries of Europe that "the two great incubators of crises from 1825 to 1857 lost a great part of their destructive power"; the oceanic cable he also regards as responsible for the prevention of many a panic in the money markets which would, if unchecked, have certainly resulted in crisis.

Then, secondly, great importance should be attached to fuller instruction and knowledge on the part of those engaged in trade not only in the abstract science of Economics but also in applied business laws and methods, particularly in the department of finance. A better study of the laws of commerce will help to prevent overproduction by engendering habits of caution and reserve. Also, bankers must learn *in times of prosperity* not to risk their money by lending too freely, and not to encourage doubtful investment on the part of speculators.

Thirdly, more important still as a factor for eliminating and mitigating the effects of crises, is the new light which

* We shall presently see that many of these causes will continue to exist under socialism also.

† *op. cit.*, p. 586.

experience of them has afforded to financiers of the way in which the beginnings of a crisis ought to be met. The most acute crises that have arisen in England might easily have been avoided if bankers knew, what they know now from bitter experience, that a time of panic is not a time to close up the coffers and refuse aid to threatened industries. Granted a fair security, and demanding just such a rate of interest as is high enough to discourage those whose businesses are certain to go under, free and courageous lending is now regarded as the right policy to adopt when the danger of a crisis appears. This is now the policy adopted by the Bank of England, and to the adoption of this policy we owe it, says Prof. Chapman, that the "crisis in England has become a rare occurrence." "By the Act of 1844," writes Nicholson,* "the Bank cannot issue more than a certain amount except against gold. A suspension of the Act, however, enables the Bank in an emergency to exceed this limit, and the *mere announcement of the suspension* has sufficed to allay a panic, as in the crises of 1847, 1857, 1866." This free and uninterrupted continuance and extension of credit in time of panic may lead in time to the almost total elimination of crises, at least in their more aggravated forms. And what is true of times of crisis is true of times even of ordinary depression. "Depression vanishes," writes Sombart,† 'the moment there is a more even flow in the production of the precious metals."

Lastly, a certain degree of centralisation should be introduced into our banking system if crises are to be successfully met, it being impossible that a number of small banks through the country could possess funds enough to encourage them to adopt the policy of free lending so necessary in times of crisis. In England

* "Principles of Political Economy," II. 203.

† *op. cit.*, p. 86. That crises are not now regarded as evils of great permanent importance is shown in an interesting article on crises in Palgrave's "Dictionary of Political Economy." We recommend it to the reader.

concentration is to a large extent effected through the Bank of England. In America,* writes Taussig,† some "substitute for it has been found in the system of combining their reserves by resorting to clearing-house certificates." Indeed, centralisation in our banking ‡ system may be regarded as only one of the many elements that make for the better organisation of commerce generally, which, as we saw, is the chief, if not the all-embracing, remedy and preventive of crises.§

* See Herkner's article in "Handwörterbuch der Staatswissenschaften," vi. 265.

In 1860 and 1884 when crisis was threatened in New York it was the combining of the *specie* reserves of the various New York banks, the establishment of a clearing-house system as between these banks, and the issue of clearing-house certificates that made it possible for the smaller banks to meet the claims made on them. The threatened panic was thus allayed. See, in this connection "Economic Essays," by Dunbar (Ed. by O. M. W. Sprague).

† Principles of Economics. It is, however, pointed out by Dunbar ("The Theory and History of Banking") that the combining of *specie* reserves, and resort to the clearing-house certificate system, "though effective by way of relief is not necessarily salutary as a regular system." It leads to irresponsibility in the case of the weaker banks.

‡ See interesting passage in Sombart, *op. cit.*, p. 87.

§ Some writers have attempted to show that crises are an inherent evil of capitalism, by attributing crises to some permanent part or quality of capitalist organisation itself, and not to such mistakes as are operative in most cases of over-production or to mere accidents of nature like harvest failures. Division of labour, *e.g.* it is said is a growth of capitalism, and division of labour, by separating the first step in production, *i.e.* the production of raw materials, by many stages from the final product and from demand, makes calculation as to future demand exceedingly difficult and so leads on to crises.

Again, it is asserted, *e.g.* by Rodbertus and Sismondi, that low wages are a necessity of capitalism and so the workman is deprived of the means of purchasing the goods produced, thus giving rise to relative over-production and to crisis; this evil is increased, it is said, by a supposed law formulated by Marx, that under capitalism fixed capital, *i.e.* machinery, tends to absorb more and more of the profits in proportion to variable capital or wages—("Capital," II. 637).

Again, some argue on the foundation of a supposed law formulated by Mill, viz. that the profits of capital must tend always to decrease. When they decrease beyond a certain degree a crisis is precipitated, capital is destroyed, and then the profits of capital begin to rise again.

These arguments may be briefly answered as follows: *The first argument* explains crises as a result of division of labour. But surely division of labour will continue under Socialism. Also we contend that the evils of division of labour belong to the chaotic period of industry and must disappear with better organisation. *The second*

Are crises possible under Socialism?

If the causes or many of the causes that produce crises are possible under socialism then crises also are possible under socialism. Now there can be no doubt that all the principal causes of crises will still be operative after the capitalist system has been, if it ever should be, supplanted by socialism. The chief of these causes, viz. over-production, we shall consider in the last place, for reasons which will presently appear. Of many of the rest there is no need to speak at any great length. Bad harvests will not be eliminated by the advent of socialism. Torrential rains, destructive drought, pestilence, sun spots,* and all the other forces and events that affect the quality and extent of harvests are without dependence on any one form of economic system, and appear and disappear indifferently under any system. New inventions are, we suppose, still to be looked for in the socialist era, and, if economic progress is to continue, the new and better system must be allowed to outclass and supplant, just as at present, the inferior systems. Again, until socialism assumes a settled international character, *i.e.* until all the boundaries of States have been broken down and the whole world becomes one State under a single government, war must be reckoned amongst the list of possible human contingencies and, therefore, as a possible cause of crisis.

argument supposes a necessary low level of wages under capitalism. This assumption we shall disprove in the section to follow. We also reject Marx's contention stated in connection with this second argument, since it is clear that increase of machinery must cause increase of employment, and thus by heightening demand, help to prevent the accumulation of unsaleable goods. Besides, the wage-earners are not, as is supposed in the present argument, the only consumers. *The third argument* is based on Mill's theory of a declining profit-rate. But this supposed law is made by Mill to depend on so many assumptions that its fulfilment need not be feared under modern conditions. Thus one of the conditions which should be fulfilled before the law of declining profits could become effective is that capital should wholly cease to be taken out of the country—(See Mill, "Political Economy," p. 443).

* According to Prof. Jevons and many other writers there is an intimate connection between the appearance of sun-spots and the periodic recurrence of bad harvests.

Of over-production we must speak at greater length than of the other causes of crisis, because of the claim made by socialists that this, the chief cause, is an exclusively capitalist evil and that it can have no place under socialism. Now, that the main psychological influences that at present lead to over-production will disappear with the disappearance of capitalism it would be as futile to contend as to maintain that human nature will suffer a complete transformation or eclipse with the advent of the new era. Indeed, unless these same psychological influences remain and continue to be operative with all their present vigour, it is obvious that the socialist State must speedily be reduced to a condition of bankruptcy, and that under socialism all the roads of social and economic progress must be retraced. The desire for wealth, at present exercised wholly in the interest of the individual who amasses the wealth, is the chief psychological factor responsible for the present rate of economic progress. Under socialism this desire for wealth would indeed be exercised, it is explained, wholly in the interest of the community at large. But no socialist would maintain that the desire for wealth will be absent or that the pressure with which the struggle for enrichment is now waged could, no matter in what interest it is exercised, be suffered to abate, even in the smallest degree, without causing serious detriment to the economic condition of the whole community. It must be assumed, therefore, that under socialism producers will still aim at seizing every opportunity for the amassing of wealth—otherwise the socialist State will be of necessity economically inferior to our own. But where the eager desire for wealth is, there also will be the possibility of over-production. For to make profit more and more, it is necessary to produce commodities more and more, *always, of course, in the hope that the demand will be proportioned to the supply.* But this is the condition that cannot always be fulfilled. The demand may not

be proportioned to supply. If it is not, and in so far as it is not, production becomes over-production, and a source of loss to the whole industrial community.

It is important, therefore, to examine the devices by which the socialists intend to regulate the relations of supply and demand so that over-production may be impossible in the socialist State. These devices are two-fold. First, it is maintained that under socialism producers will have a better understanding of "the real nature of productive forces," they will be able to consult with one another and with others as well, as to the condition of the market. In this way they will avoid producing useless commodities, and will at the same time not lose any opportunity of profiting by new or increased demands. Knowledge or enquiry of this kind it is said, "goes against the grain of the capitalist mode of production and its defenders,"* whereas it is a natural and necessary feature of socialist production.

Our answer is that it is impossible that capitalists should not be as eager to understand the effect of the social forces, in so far as these forces affect production and consumption, as socialists are, since, under the capitalist system, any losses that are sustained through ignorance of them fall personally upon the individual producer, whereas under socialism such losses would have to be borne not by the producer alone but by the whole community. Such knowledge, therefore, cannot go against the grain of the capitalist any more than making money goes against his grain. As to the relative opportunities of the two classes we think that the balance is not in favour of the socialist producers. Capitalists may consult with their own agents, whom they send out into the world's markets, as to the possibilities of future demand; and these agents are the keenest judges of future demand. Under socialism, of course, producers could also consult with their agents, but to no better effect than present producers can.

* The argument is developed at length by Engels—*op. cit.* pp. 70–74.

In the socialist State, however, there is one *apparent* advantage concerning the relations of production and demand that has to be examined. At present, producers are rival competitors with one another, and, therefore, they cannot consult with one another as to the rate at which production ought to take place. Each goes his own way, and, so, over-production is of constant occurrence. But under socialism, it is said, producers will not be rivals but partners of one great firm, and, therefore, they will be able to control production so that it may never exceed demand. Our view of this supposed advantage is that, as we have already said, it is an apparent advantage only. Really it amounts to a very great evil. Successful production means, not production that never exceeds demand, for that could be effected by hardly producing at all, but production which, while it does not exceed, is always well up to the level of demand, and that even to some extent creates and quickens demand. Undoubtedly, producers, by friendly consultation, might avoid many of the evils of over-production, but only, it seems to us, by running the risk of an opposite and equally great economic evil, that, viz. of under-production; and production regulated by such a standard would mean the easing off of all that pressure in the industrial world, on the continued maintenance and increase of which successful business enterprise in the last instance depends.*

The second method for avoiding over-production under the socialist scheme is that of production *on*, or *according to*, demand (production sur commande). If production takes place only according as orders come in, over-production becomes impossible. Under capitalism, it is asserted, such a system is out of the question because

* As a matter of fact, consultations amongst producers have not been able to do more for proportioning production to supply, than the advice of the ordinary agent acting in conjunction with the producer. Herkner points out ("Hand, der. St." p. 264) that the formation of cartels (which are generally bodies of producers united together under certain understandings as to production or distribution) has in no way affected the occurrence of crises.

each competitor is eager to forestall all the rest, and to take all the profits to himself. He will, therefore, produce before orders are received so as to be ready for demand when it arises. Under socialism the absence of competition removes the need of all this feverish anxiety to anticipate demand.*

The objections to this device need only to be very briefly stated. *First*, one does not set up expensive machinery in order to keep it idle half the year between the arrival of one order and another; one sets up expensive machinery in order to work it all the time, else it means loss to its owner. *Secondly*, it is only by producing before orders are received that orders can, generally speaking, be met. If no winter clothing is made until orders have actually arrived many persons would be left without winter clothing. And not only according to this theory, could boots not be made and garments not be cut and sewn, or machines not constructed before orders are actually received, but leather could not be prepared, nor animals yielding leather reared, nor cotton spun, nor even the ground tilled, nor steel prepared, nor could any raw material be produced until orders for the finished article had first been duly delivered. Such conclusions show the inner weakness of the whole system of *production sur commande*. Anticipation is as necessary as production itself for meeting market demand. *Finally*, as we said before, one of the functions of supply, a function of very great importance in actual business affairs, is to create demand. "Production on demand" excludes the exercise of this function and consequently cuts off one of the chief sources of a country's wealth. We cannot, therefore, agree that it is possible to avoid the occurrence of crises under the socialist system through the process known as *production sur commande*. And, therefore, we are

* Landry describes this socialist device in his "Manuel d'Économique," p. 539. An able criticism of the theory is to be found in Seligman's work already quoted.

forced to the conclusion that over-production will still have to be regarded as a possible cause of crises in the socialist era as well as now.

The results of our reasoning in the present section are as follows: under the system of the private ownership of capital, crises have been no doubt of frequent occurrence. But the danger of them is gradually being eliminated and their consequences are becoming of less and less importance in the economic world. Under socialism, crises will occur just as under capitalism, since all the causes of crises will continue in the socialist era. Our reasoning, however, in the following chapter, will go to show that the nation at large will be under much less favourable conditions in the socialist State than now for bearing the burden of crises when they arise.

The Exploitation of Labour

This and the next two arguments of Marx were of the nature of prophecy, and, therefore, they may be briefly disposed of by the test of actual accomplished fact.

Want of space forbids our quoting at length Marx's terrible indictment against capitalism, under the head of "exploitation." The capitalist, he tells us, endeavours to make all the profit he can out of the labourer. He does so in three ways, first, by lowering the male labourer's wage to the bare subsistence level, and also by employing women and children at a wage below this level; secondly, by prolongation of the working day, allowing the labourer only just so much rest in each twenty-four hours as will fit him to continue his dreary work during the next twenty-four; * thirdly, by increased intensification of labour, by speeding up

* We are conscious of the inadequacy, amounting almost to unfairness, of our presentation of Marx's powerful argument here. It is only want of space that forbids our quoting him at length. The argument is given in Vol. II. ch. xv. of "Capital."

machinery to its utmost, and placing the workman over just as many high-speed machines as he is able to control without losing control over his own reason. The indictment is a terrible one, and as a picture of the workings of capitalism in Marx's time it probably is not exaggerated. Indeed, even now there is much of Marx's description that accords with the actual conditions obtaining in our factories.

But Marx's argument was intended to stand for more than a mere statement of the condition of things obtaining at any particular period. It was intended as a statement of the abiding condition of labour under capitalism, of a condition of things that is as *necessary* under the capitalist system as frost and snow are in the polar regions. As such the argument fails. The greed of capitalists has not been allowed to run riot with the labourer's interests. In every civilised country the capitalist finds himself checked and controlled at many points by governmental interference, by public opinion, and by combinations amongst workmen themselves. He cannot now employ women and children just as, and on whatever conditions, he desires. He cannot employ even men for more than the legitimate number of hours. In many departments of industry the weekly half-holiday is now prescribed by law. The capitalist must also set aside some of the surplus-value of labour in order to provide the proper amount of light and air, and to meet the other requirements of the factory laws as to sanitation. He must insure his men against sickness and accident. He must protect their lives by the adoption of stringent precautions in regard to danger arising from machinery. In innumerable ways the danger of exploitation has been reduced, so that it cannot now be said that capitalism is a system based on exploitation.

Nevertheless much remains to be done both by government and by combinations amongst workmen themselves. There are capitalists who, if left to themselves,

would be certain to take advantage of the labourer's poverty, which it is said, will at times induce the labourer to do almost anything for almost nothing! It may be said even that *most* capitalists would do so. But in order to determine the essential characteristics of the capitalist system one must take account not merely of what capitalists would, if unchecked, be likely to do, but also of what government has done and is still able to do, and of the capacity of organised labour to protect its own interest, first by way of direct action, and, secondly, indirectly, through their influence over government; and judging by this standard it is certain that exploitation is not essential to the system of private capital.

But again, just as in the question of crises, so also in regard to exploitation, our findings of the chapter to follow are of immense importance in any comparison of private capitalism with socialism. Overwork, work under unsanitary conditions, and the other evils contained under "exploitation" are all so many particular grievances going to show that the welfare of the workman is not attained under capitalism. But the central and essential condition of welfare is the remuneration which a man receives for his work. Where the remuneration is good the other grievances are certain gradually to be remedied. In a system that does not allow of a proper remuneration there is no kind of exploitation that may not be practised, since there will be no money to provide the required amenities. Now, under socialism, the remuneration of labour will be far below the level at which it now stands. Indeed, under socialism, as we shall see in the next chapter, a prospect even more alarming than that of insufficient remuneration has to be contemplated, viz. the prospect of national bankruptcy with all that this condition means for a large industrial proletariat.

The Reserve Army of Labour

Under the capitalist system, Marx tells us, there must always exist a reserve army of labour, that is, of unemployed. These are thrown out of work partly through crises, and partly through the capacity of machinery to render men superfluous. What is more, this reserve army must always be on the increase. Every improvement in machinery and every increase in the number of machines leads to further disemployment; and since, as we have already seen, more and more of the surplus profit of industry is turned into machinery as profits increase, it follows that the number of the unemployed must necessarily become at each period a relatively greater *per-centage* of the entire population.*

Reply.—Let us first accept the argument in the sense in which socialists usually understand it, namely, that, under capitalism, unemployment tends to increase, in which sense alone it can be regarded as a serious indictment against the capitalist system. As a statement of the facts the argument is false in every way. There has been no increase in the number of unemployed in England from the year 1865 till the present time. The following list of *per-centages* of employed within the ranks of trades unionists is given by Webb †:—

1865–1871 . . .	98.7 per cent.
1872–1881 . . .	98.9 ,,
1882–1888 . . .	96.8 ,,
1889–1898 . . .	98.3 ,,
1899–1907 . . .	98.4 ,,

* This is the sense in which Marx's words are usually understood—"The labouring population," he writes (Vol. II. 645), "therefore, produces, along with the accumulation of capital produced by it, the means by which itself is made relatively superfluous, is turned into a relative surplus population and it does this to an always increasing extent." We shall see, however, in the text above that this is not the sense in which Marx's argument ought to be understood if it is to be regarded as consistent with itself and with the grounds on which it is made to rest.

† "Dictionary of Statistics," p. 612.

After that period there was a decided increase in the *per-centage* of employed.

More interesting still are the following accounts of the *absolute* figures of unemployment: between the years 1849–1900, during which the population of England and Wales rose from seventeen to thirty-two millions odd, the number of unemployed fell from 934,419 to 797,630.* Again, in France there were at the end of the nineteenth century about 5,600,000 workers. The average number of unemployed, according to the census of 1896–1900, was 300,000.† These included sick, idle, incapable, and strikers. But even supposing that they were all men capable and willing to work, that is not a bad system which out of 5,600,000 men can maintain in employment a permanent 5,300,000. Besides, a large percentage of these belong to Paris—the city of the poor and unemployed. These, indeed, are always very numerous. Nevertheless it has been pointed out by M. Leroy-Beaulieu ‡ that the number of unemployed in Paris in 1895 was not greater than that of 1803 although the population had increased fourfold in the interval.

In Germany the number of unemployed is even less than in England. In 1895 the unemployed in Germany represented in summer time only .58% of the entire population § and in winter 1.48, or an average of 1.03% for the whole year, a very small *per-centage* indeed. It, of course, also includes the unwilling, and the incapacitated, as well as those genuinely kept out of employment.

But economists do not rely on statistics merely for their reply to the socialist arguments; they point out that from the very nature of our modern system of

* Quoted by M. Leroy-Beaulieu in his "Le Collectivisme," p. 317.
† Figures are given by Mermeix, "Le Socialisme," p. 228.
‡ p. 322.
§ In fairness we should add that of *the working population* in the same year the unemployed constituted 1.35 and 3.46 per cent. (See Art. Arbeitslosigkeit in "Hand. der. St.").

production it is clear that unemployment cannot go on increasing except during the very brief periods that are required for adjustment between new discoveries on the one hand and the opening of new markets and the setting up of the allied industries on the other. Machinery may momentarily disemploy a certain number, but by cheapening goods it opens up new markets for them, and thus increases demand again. The disemployed are then reinstated in their old positions. Again, most new inventions bring into being a number of allied or dependent businesses, and in this way, though temporary unemployment may occur, the balance of employment is always being restored.*

Finally, as has already been said, according to Marx himself the law of increase in the *per-centage* of unemployed is a law of relative increase only. But relative to what? Most socialists maintain that increase in unemployment must necessarily be relative to the total population, *i.e.* that if at one period the unemployed are one *per-cent.* of the population, at another they will constitute two *per-cent.*, at another three *per-cent.* This is the sense in which we have hitherto been interpreting Marx's argument, and it is the only sense in which the argument could, if true, be made to tell against the capitalistic system. As a matter of fact, however, this is not the sense which Marx himself intended to convey. He even confesses that with the creation of new machinery the new "factory operatives . . . may become more numerous than the manufacturing workmen and handicraftsmen that have been displaced."† But he claims that there is always a relative decrease, in the sense that a much smaller proportion of the surplus-profit of labour must always go in payment of wages to the newly employed than that which is put into the new machinery. But this relative decrease in the

* On this point see Marshall, *op. cit.* p 665, and Chapman, "Political Economy" (Home University Library, p. 223 and 226).

† Vol. II. p. 451.

number of employed is, we claim, quite consistent with decrease in the number of the unemployed, and even with the total elimination of unemployment; and, therefore, in this sense the argument is of no avail against the capitalist system. What harm, even though much money has to go into machinery, if thereby the wages-bill of the nation as well as the number of employed receive substantial increase?

Let it not be understood, however, that it is any part of our purpose here to minimise the dreadful evils of unemployment. It is one of the first duties devolving on any government to check these evils, and not to leave the unfortunate workman at the mercy of every adverse wind that blows in the industrial world. The question, however, how unemployment is actually to be met is one that lies beyond the scope of the present work.*

The Iron Law of Wages

A direct result of the maintenance under the capitalistic system of the reserve army of unemployed is, say the socialists, the setting up of an "iron law of wages," the law, viz. that workmen find themselves so completely at the mercy of the capitalist, and so hard set to find employment that they are willing to accept employment on any terms, even to accepting such a remuneration as barely suffices to keep body and soul together. The capitalist is not unwilling to utilise this necessitous condition of his employees, on the contrary, he exerts all his influence to keep them in that position, and so in employing labour he strikes the hardest bargain possible, which is that of the bare subsistence wage. Wages may sometimes rise above this level. But their tendency is to remain always as little over it as possible. This is the "iron law of wages," a law first formulated by Lassalle and later adopted by Marx.

* See Chapman, "Political Economy," p. 341; also Beveridge, "Unemployment."

Reply.—This argument, like the last, may be answered by an appeal to facts. Have wages tended to remain at the bare subsistence level? All authorities, including even the best known socialist writers, admit that in this matter the Marxian prophecy has remained unfulfilled. "Political Economy," writes Prof. Cannan,* "in these days knows no iron or brazen law of wages." The following facts are sufficiently indicative of the reason why the "iron law of wages" is not now accepted by economist or statistician. The wages of labour have increased both relatively and absolutely. "In France," writes Sombart,† "an official enquiry at the *Office du Travail* showed that wages had been doubled since 1850 . . . the cost of living has not increased by more than 25%." Sidney Webb ‡ points out that in England, between the years 1837 and 1897, money wages doubled. The price of food on the other hand, with the exception of meat and milk, was lower in the latter year than in the former. Only rent had risen. Giffen, in his "Essays in Finance," § shows that in the fifty years anterior to 1883 wages had risen for the most part about 50%. In some cases, indeed, wages advanced only 20%; but these were all cases in which the wages received had always stood at a high level, *e.g.* the case of mule-spinners whose wages even fifty years ago varied from 25s. 6d. per week to 30s. In some cases wages rose as much as 150%. Again, he shows, that whereas wages have risen in the way described, the hours of labour have fallen by 20%. "The workman," he writes, "gets from 50 to 100% more money for 20% less work; in round numbers he has gained from 70 to 120% in fifty years in money return." As regards purchasing power he writes: "there seems to be little doubt things are

* "The Economic Outlook," p. 77.

† *op. cit.* p. 85. Sombart, as already stated, is professor of Political Economy in the commercial college (Handelshochschule) of Berlin. He is also a Socialist.

‡ "Industrial Democracy," Appendix III. Sidney Webb is also a Socialist.

§ p. 372.

much the same as they were fifty years ago." The price of wheat is lower, and this low average, he remarks, "is enhanced by the fact that it is not an average lying between widely distant extremes." The only article, we are told,* which has increased in price is meat, but this rise is largely due to the fact that the consumption of meat amongst the working classes is so much greater than it was.

Of Germany, Sombart writes: "The facts are the same in Germany. There is no doubt that the majority of the working classes are better off than they were fifty or one hundred years ago, and that the proportion of the very poor of the population is smaller, certainly during the last decade or so. In Saxony, for example, in 1879 the people with an income less than 500 Mk. formed 51.5% of the population; in 1894 they were only 36.59%; in 1900 only 28.29%."

The foregoing figures and others to be found in recent economic writings are regarded by all thinkers, even those who belong to the socialist school, as affording a complete refutation of Marx's "iron law of wages."

* p. 380. As regards more recent years we find it exceedingly difficult to reach anything like a general yet sufficiently definite conclusion with which to compare the figures given above. In this matter the variation of opinion is quite bewildering. Thus, Mr. L. G. Chiozza Money, in an article in the *Daily News and Leader*, February 20th, 1913, writes that "the purchasing power of the sovereign in relation to 'other things' has fallen by at least 10% since 1895. . . . Cash wages fortunately have not remained stationary since 1895. They have risen broadly by about 12½% in 1895–1911. It will be obvious, however, that such a rise is not nearly enough to compensate for the increased cost of living. Real wages have fallen," etc. In the same paper there appeared an important article written January 16th, 1914, to the effect that the prices of all *manufactured* articles had fallen considerably "from old days." This second fact does not seem to have been taken sufficiently into account in the first article. We are, however, prepared to admit that real wages have fallen in the sense that the purchasing power of the sovereign has fallen of recent years. It is just one of those many cases in which readjustment is slow to appear. That wages will rise to right this fall in purchasing power is certain. But adjustment should be hastened by means of pressure brought to bear upon government, and through action on the part of the organised societies of labour. The poor cannot, as the rich can, await the process of automatic adjustment. The foregoing facts, however, in no way confirm the theory of an "iron law of wages."

Some recent modifications of the theory of the "Iron Law of Wages."

For the foregoing reasons we find that the supposed "iron law" has been made to undergo modifications at the hands of the more recent socialists which entirely alter its character and meaning. It has lost in definiteness but has gained in width of application. The new "iron law" may be summarised as follows: *—(*a*) although the wages of labour are not found to remain at the bare subsistence level, nevertheless the natural tendency of capitalists is to keep them at that level; (*b*) though wages have increased, the *moral* condition of the worker has not improved. Factories are still sinks of iniquity. Workmen are still treated by their masters as slaves, not as men; (*c*) though physiologically the lot of workmen is improved in the sense that they eat more and wear better clothes, psychologically their misery is increased, since, as civilisation grows, the needs of workmen, as of all other classes, grow, and the increased wage of labour is not sufficient to meet those expanding needs. Fifty years ago workmen did not need to be educated; now education is an essential of civilised life. Yet most workmen can afford to give their children only the minimum of education; (*d*) the proletariat is poorer in the sense that it is relatively poorer than it was fifty years ago. It receives a gradually diminishing share of the ever increasing returns of industry.

Reply.—In general the foregoing arguments seem to aim at epitomising all the evils of capitalism. But every system, even that of the socialists, has its defects. And the question is whether socialism would not induce evils graver and more numerous than those of capitalism. This latter question we shall review in one of its most important aspects, that, viz. of the receipts of workmen, in the following chapter. Let us briefly, however, refer to the different classes of defects here enumerated by the socialists. (*a*) That capitalists would be bad if they could we shall admit at least for the sake of argument. But, after all, the tendency of capitalists to keep down wages makes very little difference to workmen if as a matter of fact the wages of workmen are found actually to increase. The sea would certainly engulf swimmers if they made no struggle to keep afloat, yet, since men do find it possible to keep afloat, the sea is not looked

* A large part of Kautsky's able work, "Le Marxisme et son Critique Bernstein," is devoted to an elaboration of this new "iron law."

upon as an enemy to mankind. (*b*) We have much sympathy with the complaints of socialists in regard to the moral degradation of factory operatives, and we believe that government should do more to raise their condition, or at all events to remove the causes of degradation. But we are not so sure that the principal causes of this degradation will be removed by making all factories the property of the State. A little thought will make it clear to the reader that there are moral evils which no economic system could entirely remove. (*c*) The increasing needs of labour are partly due to increase in good living, according to the well-known rule that the more a man has the more he wants, and partly through the general advance of civilisation. Now it is obvious that capitalism should not be repudiated for increasing the needs of workmen in the first of the two ways here indicated, any more than food is condemned for increasing a man's need of further food by the additional vigour that it imparts. If, however, it is found that the labourer's income does not expand according as the needs of civilisation increase, then indeed the socialists have a case, not necessarily for establishing socialism, but for bringing such pressure to bear on government and capitalists as will ensure to workmen such an income and such opportunities for development as each succeeding advance in civilisation requires. (*d*) We quite agree that workmen do not at present receive their proper proportion of the national dividend in the form of wages, and that steps will have to be taken to remove such injustices from our present system. But the question arises—Will the receipts of labour be greater under socialism than they are under capitalism with all its defects and injustices, real and alleged? Our answer to this question, which is of prime importance, will be given in the following chapter, where we hope to show that the share of the national income available for labour will certainly not be greater under the socialist *régime* than it is now—on the contrary, for the greater body of workmen, and in particular for the whole body of skilled mechanics, it will be much less.*

* We may be allowed at the close of the present chapter to record our opinion that whatever may be said of others there is one class of workman whose interests will require to be especially cared for in any new scheme of wages that government may think of initiating under the present system of private capital. We refer to the unskilled hands, whose wages are certainly well below the minimum required by humanity and justice, and who by their very numbers and poor condition are placed so much at the mercy of unscrupulous capitalists. See the question of the wages-contract, p. 343.

CHAPTER VII

PRESENT WAGES AND SOCIALIST INCOMES COMPARED

BEFORE proceeding to discuss the problem of the national dividend under socialism and how it compares with present wages, we think it necessary to make a few introductory remarks on the general position of present-day wage-earners as compared with that which the masses are to occupy under socialism.

Under the capitalist system the workers are all wage-earners. Now what is the meaning of this term, "wage-earner," in which, the socialists tell us, are summed up all the evils attendant upon the capitalist system? A wage-earner is usually understood to mean one who is in daily or weekly receipt of a certain agreed sum for work done in the interest of his employer. And this definition is true so far as it goes; but it fails to specify what, to our mind, is the chief characteristic of the wage-earner's position in the industrial world to-day, viz. that not only is he paid his wages at regular and brief intervals, but he is paid the full agreed sum, whether the profits of the undertaking go up or down, or even if these profits disappear altogether. His position in this respect is in marked contrast to that of the capitalist. The capitalist is, indeed, owner of the firm which he sets up and controls, but when the concern which is his property fails, *i.e.* when it ceases to be a source of profit to its owner, then all that he has contributed to the firm is lost irretrievably, the money which he has expended in machinery and buildings, the wages paid, the time and attention given; very often, long before a capitalist business is finally wound up, and long after failure has begun to set in, the capitalist may

still be working at a loss, but the wage-earner must still in every case receive the stipulated wage. His is the first claim on the concern, and, failing the concern, on the pocket of the capitalist himself. At present there are millions and millions of pounds invested in industrial and other concerns in England from which capitalists receive no return; but the workman is paid his full wages in every case. In railways alone in the United Kingdom there is invested at present in ordinary stock no less a sum than £67,000,000 on which no dividend is paid; preference and debenture railway shares absorb nearly eighteen millions of *non*-dividend-bearing capital. There are private steel works in England in which large bodies of men continue to be employed, which, yet, yield in some cases a merely nominal profit, in other cases no profit whatsoever. Yet the workmen are fully paid in every case. It would be difficult to state the total amount of capital lost each year in the industrial world generally through unprofitable businesses; but it is computed * that in the United Kingdom a hundred millions are annually invested and lost in unremunerative concerns of one kind or another. We do not claim that in these cases the capitalist is actuated by any philanthropic or other high motive in still paying wages for work that has ceased to be remunerative to himself. As long as capitalist concerns continue in existence it is evident that hopes are still entertained that failure will ultimately be turned into success, and that they will bring a profit to the capitalist. Neither are we attempting to discover any special excellence in the position of the wage-earner as compared with that of the present-day capitalist. Indeed, it is not our purpose to contrast or compare their positions in any way. For the present we are simply attempting to define the position of the wage-earner † under capitalism in order to com-

* Ireson, "The People's Progress," p. 106.

† We do not claim that the wages system is the best of all systems for securing the welfare of the masses. Far better would it be in many respects if the masses were property-holders as in times long

pare it with the position which workmen are in future to occupy under the socialist *régime.* Our sole contention at present is that, whatever may be the actuating motive of the capitalist, and however well or badly capitalists may fare in their respective enterprises, the position of the wage-earner always is that as long as he continues to be employed the law assures him his full weekly wage.

Under socialism the workers will no longer be wage-earners but partners in the nation's wealth. They will receive, not a settled and permanent weekly wage, but a certain annual or bi-annual share in the varying profits of the nation. They will share, therefore, in all the increasing prosperity of the nation; but they will share in its losses, too—in the decreases as well as in the increases. On which side the balance is likely to occur, whether on the side of profit or of loss, or whether the socialist workman's share of the profits is likely to be greater or less than the average wages paid under capitalism, is the question with which this chapter is concerned, and which we now go on to consider.

Our difficulty here is to select a standard country and a standard period on which to base our comparison. Wages differ in different countries and at different periods. The national income varies in a similar manner. We make bold, however, in our present discussion to select England as our standard country,* and the year 1904–5 as our standard year. Our choice as regards nationality will easily be understood. England is one of the oldest and most developed of all industrial countries, and the conditions of employment obtaining there represent the normal relations of capitalist to employee more clearly than is elsewhere the case. The particular year selected needs justification. The year

past. For the present our purpose is to show that the position of wage-earners is better than that of the masses under the socialist State.

* Other countries will also come up for discussion in the course of our argument.

1904–5 was a normal year industrially regarded. There was no extraordinary boom in trade and no exceptional amount of depression, and it is the normal conditions that are of importance in our present discussion. Also in regard to this year there is available the important evidence given before the Select Committee on Income Tax in 1906.* Again, since 1905, there has been ample time to examine the distribution of income in that year and to build reflections on it, so that there is now available a large amount of literature, socialist and otherwise, occupied with the distribution of income, in this and proximate years; and though agreement is far from established, even amongst socialist writers, as to the exact figures in these cases, still, materials are presented to us which will enable any student to form a general idea of the national income and its distribution, sufficiently accurate for purposes of our present comparison. There are, as we said, divergencies of view as to the right figures, but fortunately, such is the character of the considerations on which our comparison is to be based, that even very wide divergencies of view may be allowed for, without in any way lessening the value of our conclusion as to the relative merits of the two economic systems now under examination.

In the year 1904–5, according to the calculations of Sir Henry Primrose,† the national income was roughly 1,750 millions. That income was divided as follows:

* See Report, 365.

† Sir Henry Primrose was Chairman of the Board of Inland Revenue. His evidence given before the Committee on income tax in 1906 occurs on pp. 1 and following of report 365.

Before asking the reader to consider the figures given in the text we wish to make a few preparatory remarks.

First, we ask the reader not to begin the reading of our argument with the belief that figures may be made to prove anything. By no feat of mathematical jugglery could you represent five pounds as yielding a pound each to six persons. Our argument concerns the division of the national income, and used aright the figures can yield but one valid conclusion.

Secondly, we wish to point out that Sir Henry Primrose's figures stand for a sensible mean reading of the various views obtaining on this subject. Thus Sir Robert Giffen gives 1,750 millions as the

728 millions was income subject to income-tax,* and, therefore, was appropriated by persons earning over £160 a year. The remainder, *i.e.* 1,022 millions was the income of persons not paying income-tax. According to Mr. Ireson's estimate this latter sum was divided between (*a*) non-manual wage-earners (clerks, teachers, etc.), (*b*) manual wage-earners (smiths, boiler-makers,

income of 1903. Mr. Chiozza Money represents the income of 1907 by the same figure. These figures cannot both be right.

Thirdly, Mr. Chiozza Money represents the national income as standing at a lower figure than that given by Sir H. Primrose. In 1903–4 he tells us it was 1,710 millions. It would be a little more in 1904–5. This lower figure is used by Mr. Chiozza Money to show how small is the proportion of the national income going to the working classes or those who do not pay income tax the amount received by the income tax-payers being known, and absorbing, he tells us, nearly half the whole sum. Now at present we are not considering the question whether a fair proportion of the national income goes to the working classes. We believe that they do not get a fair proportion. At present, however, the problem before us is different from this. We are comparing the position of the workman in regard to income under capitalism and under socialism, and the point which we wish to bring out in the present note is, that if Mr. Chiozza Money's figures represent a genuine grievance of the working classes, they also tell against socialism, in fact, they prejudice the socialist position from the start. If the national income in the year under examination were 1,710 millions, as Mr. Money states, and not 1,750 millions, then the dividend to be received by each citizen under socialism will be smaller than it would be on Sir Henry Primrose's computation. For this reason, in as much as we do not wish to prejudice the case agalnst socialism from the start, and also because Sir Henry Primrose's figures seem more convincing in themselves, we adopt the latter's account of the national income in 1904–5.

Our fourth point is that whether we accept the figures given by Sir Henry Primrose or others given by other witnesses before the Committee on Income Tax, makes hardly any, if any, difference to the conclusion which we shall finally draw from these figures. As is said in the text such is the character of our present enquiry that very large differences might be allowed without in any way affecting the final result.

In the *last* place we wish to warn the reader against certain most misleading statements of the national income in which writers do not hesitate to put down as true income what in reality is stated in the Inland Revenue reports to be only the amount *reviewed* for purposes of assessments. Of this over 200 millions is over-assessment, and much of this 200 millions is not received by anybody in the land. This is clearly expressed in the Inland Revenue Reports themselves. A most glaring misrepresentation of this kind is found in the well-known Fabian tract, "Facts for Socialists," No. 5.

* This figure was an estimate; it fell below the actual returns published later, by a negligible quantity.

It is claimed by some writers that the figure given in the text

miners, etc., as well as unskilled labourers), and (*c*) incompetents and casuals occupied on irregular and uncertain work. Now of this 1,022 millions by far the largest sum went to the second class, viz. (manual wage-earners)—in all it amounted to about 750 millions. The non-manual wage-earners received about 247 millions, and the incompetents and casuals about 25 millions.

Now let us see what is the meaning of these figures in terms of family income. There were in England, in the year under discussion, about ten million families, one million of which were rich, in the sense that they paid income-tax, the other nine millions of which were poor in the sense that they paid no income-tax. These latter we speak of as working families. Striking an average we find that the average income earned by these working families in the year 1905 was £113 per family.*

as representing the sum on which income tax is paid is too low since it takes no account of evasions in income tax returns. Now in the report of the Select Committee on income tax of 1906 it is pointed out that on four-fifths of the national income there is no room whatever for evasion, since the tax is either assessed at the source or because the use of certain special regulations makes evasion impossible. On the remaining one-fifth only a comparatively small amount of evasion can take place, and, as Mr. Ireson points out, even this amount is "more than counterbalanced" by the fact that many people pay on an assessed income which is much above the true income, and also that in assessing income no allowance is made for loss of capital due to bad investments, unsuccessful trading, etc. Income tax is paid on all income, even such part of it as is later invested in things that turn out to be a failure. The true net income, therefore, taking two or three years together will be less than the sum given in the assessment returns. See very interesting discussion on this subject in Mr. Ireson's book, "The People's Progress," ch. x. and xi.

* We make no apology for the following lengthy quotation from Mr. Ireson's book (p. 8): "The figure (£113) is slightly higher than is admitted by any of the Socialist statisticians, but in this connection attention may be drawn to the following, written in 1909: 'The expenditure in poor relief in England and Wales is about 14 millions. The cost of old age pensions must be placed at another 8 millions. In addition to this there is a very large outlay by charitable institutions in London alone according to the latest issue of the Annual Charities Register an income of over ten millions is annually expended by charitable agencies. If we allow half as much more for the rest of the country, nearly 40 millions is, in one way or another, being expended on the poor. In addition to this there is 20 millions, raised by taxation, applied to the education of the children of the masses,

Of course this is an average lying between very wide extremes, and it is important for our present discussion that these extremes should be noted. The 750 millions earned by manual labour were earned by about 6 million families receiving an average of £125 per family. The 247 millions that went to non-manual labour were divided between 2 million families, giving an average a little below the last figure (£123) whilst the 25 millions absorbed by the incompetents and casuals were the earnings of a million families. Again, we have to point out that the earnings of the manual labourers were very varied. Of the 750 millions earned by manual labour, about 75 millions went to unskilled artisans earning less than a pound a week. In England there were about a million and a half such families. The rest, *i.e.* 675 millions went to skilled labour representing 4½ million families, who, therefore, enjoyed an average income of some £150 a year.* From the foregoing statement let us recall certain salient figures which it is important to bear in mind in connection with the comparison to follow. *The total income of the United Kingdom in the year* 1905 *was about* 1,750 *millions. Of this about* 1,022 *millions went to the poor, that is, to persons earning less than* £160 *a year. The average income of each poor family including the very poorest,* i.e. *the incompetent and casuals was* £113. *The largest section of these* (i.e. *the* 4½ *million families of the skilled manual workers*) *received* £150 *a year on an average. Also taking skilled manual*

thus bringing the total up to 60 millions annually." This last sum in Mr. Ireson's statement needs, however, to be lessened. Much of it is itself subscribed by the poor, in indirect taxation. But whether the sum £113 is somewhat larger than the average wage of the workman or is not, affects, as we have already said, our present discussion in only a very slight degree, if at all. This will be seen from the nature of the considerations in the text above.

* This sum may to the reader appear high. But two points have to be remembered. First, we are dealing here with *skilled* artisans, many of whom earn up to three pounds per week. Secondly, we are dealing with artisans' *families* (not individuals), in which there are often two or three wage-earners. In the *Referee*, July 18th, 1909, Mr. Sims gives evidence that many workmen's families in England, by their joint income, earn treble and quadruple the above sum.

with skilled non-manual workers (i.e. *smiths, boiler-makers, carpenters, etc., on the one hand, and the less opulent clerks, etc., on the other*) *we find that of this immense body of workers* (6⅔ *million families out of the* 9 *million families that make up the masses, and out of the ten million families that make up the entire population*) *the average income amounted to* £142 * *a year.*

Our next step in the present discussion is to determine the average income of the working-man's family under the socialist system. Here, of course, we are met at the outset by the difficulty that socialists are not agreed as to the manner in which the national income is to be divided under the new *régime*. Some are for equal distribution all round, others are for graded distribution according to the value of the work done, the amount of labour expended, or the disagreeableness of the employment. Of some of these systems we shall have to take account in the computation to follow. But, whatever the system of distribution adopted, the first problem to be solved, a problem which is in no way affected by the question of the system of payment to be applied, is that of the total amount of money available for annual distribution under the socialist scheme. In this connection we naturally resume our consideration of the sum of money available in the year 1905. In that year, as we saw, the total income of the United Kingdom amounted to 1,750 millions. Now it is evident that not all of this immense sum would be available for distribution under socialism. On the

* Ireson, Table B. Mr. Chiozza Money, in "Riches and Poverty," gives figures which would place the average income of this last class at £120 per family. Mr. Ireson demonstrates fully that this figure is too low. But, as we said before, for purposes of our computation we might easily accept it, without in the least affecting the conclusion to which our argument leads. Also, if Mr. Chiozza Money's figure is to stand he must be prepared to accept the logical conclusion already referred to (p. 229). His figure brings down the total income of the nation below the figure given by Mr. Ireson, and, therefore, reduces correspondingly the dividend possible under socialism—a consequence, as we said before, most unfavourable to socialism as compared with the present wages system.

contrary, before distribution could be begun, several important deductions would have to be made for one or other of the many purposes inseparable from industry. In the first place a very large sum would have to be deducted from the public national income (as it is now deducted, for the most part, from the capitalist's private income) for purposes of *renewal and increase of capital*, i.e. of plant, and of buildings, since without *increase* of capital, industry could not continue to make progress, and, without *renewal*, industry could not even be maintained. Now, in 1913, according to Mr. Chiozza Money,* a sum of 350 millions would be required under this heading. We are safe then in claiming that in the year 1905 a sum of 250 millions was spent. Allowing 50 millions † out of this sum for wages, which amount would of course be available for distribution under socialism, we find the available income reduced to 1,550 millions.

From this again a second deduction will have to be made under the head of the expenses of government, which expenses, Karl Kautsky tells us,‡ will be much higher under socialism than under our present *régime*. Now since under socialism there can be neither income tax, nor local rates, by means of which these expenses are at present so largely met, an equivalent sum will have to be raised, to be deducted from the national income before distribution shall begin. Now in 1905 the income-tax of the United Kingdom amounted to 31 millions. The amount of public rates collected

* *Daily News and Leader*, July 18th, 1913.

† This sum is really too large. The Board of Trade Memorandum [Cd. 1761] p. 361, allows 10 millions as the wages paid in connection with the maintenance and renewal of the capital used in 1903 in producing exported goods. And since, according to the Census of Production returns [Cd. 6320] p. 26, exports are about a third of the total output, the above figure should stand at about 30 millions. But in deference to the socialist case we shall accept the higher figure of 50 millions. Readers who may be surprised at the Board of Trade allowing only 10 millions as wages in connection with the up-keep of the plant and machinery used in producing goods for export should remember that much of the machinery used is not produced at home.

‡ "The Morrow of the Social Revolution," p. 17.

for local purposes was 67 millions,* and therefore, allowing again for the sum now spent in salaries and wages, we must provide in the socialist scheme a remainder of, say, 50 millions to defray the expenses of government under the two headings of general and local purposes, thus reducing the amount available for distribution to 1,520 millions.

A third reduction to be effected comes under the heading of "doubly-paid income tax." The real and actual national income as determined on the basis of income-tax is always an over-estimate. A particular individual may pay income-tax on £1,000, but on much of that same £1,000 income tax is certain to be paid over again, for instance on the £100 which is paid out of it in doctor's fees. Proceeding on the basis of income-tax the total income would here be represented at £1,100, whereas in reality only £1,000 of real divisible income existed. Under socialism, where the money has actually to be divided, only real divisible income must be taken into account, and, therefore, in determining the amount available for distribution under socialism we must deduce from the national income that portion which has been counted twice over in the way described. What is the amount of that portion? In the year 1886, according to Prof. Leone Levi, the amount of doubly-taxed income was something like 100 millions. It could not be less in 1905. In this way the sum of 1,520 millions already computed falls further to 1,420 millions, but lest any unfairness to the socialist case may possibly have escaped us (and we do not think it has) we shall allow for the present the sum to be divided to stand at 1,450 millions.

As yet we have not spoken of other factors that under socialism are certain to bring down the available national income, and of one in particular which will reduce the sum available for distribution by an even greater amount than the total of deductions already considered; these

* Webb, "Dictionary of Statistics," p. 374.

additional factors we shall mention presently. But for the moment we wish to review our position and see what the socialist dividend would be if the whole remaining 1,450 millions were divided amongst the people, a supposition, we repeat, which is over-favourable to socialism, since not only have we already made excessively large concessions to their case, but also reductions have yet to be made which are of even greater importance than those which we have hitherto taken into account.

If the sum of 1,450 millions were divided equally amongst the entire population it is evident that the ten million families that constituted the population of the United Kingdom in the year now under review would each receive £145. The result might then be stated: under socialism the rich shall all be very much poorer, the skilled worker (manual and non-manual) shall be very little better off (their average at present being £142); only the position of the unskilled workers, as well as casuals and incompetents (2½ millions out of the total of 10 millions that constitute the nation) shall be improved, but the improvement in this case is substantial and decisive. Let us now examine our sum of 1,450 millions from another point of view.

We know that many socialists maintain that under socialism there will be a gradation of incomes, that the directors of industry will receive more than others, and the skilled and fit more than the unskilled and incompetent. Indeed, no socialist that we know recommends complete equality. Their only demand is that whatever may be the system of gradation adopted something approaching to a system of equality of income should be observed. It is easy, however, to show that, even allowing for a narrow gradation of incomes, the result, so far as the great body of workers is concerned, will be the same as that already described. Probably the least average* that could be claimed for the

* This average, it is understood, should lie between closely situated extremes.

unskilled worker's family under the socialist system is £100 a year, an average that would absorb 260 millions of the available sum. If they received less the whole socialist theory of equality would fall to the ground. Next come the directors of industry, great and small, the men who between them will control the whole commercial system of the nation. We take it that between head directors, managers, and foremen, a million functionaries of one kind or another will be required. It is a small estimate enough, considering that in France at present 900,000 functionaries are engaged, and that private capitalism is much more sparing of functionaries than is any system of public control. Now these men will to a large extent have the disposal of the money of the nation in their own hands. We think, therefore, that we are not going too far in claiming that they will appoint unto themselves at least salaries of £230* a year per family, or a further 230 millions of the available income. We have thus left for the 6½ million skilled workers (manual and non-manual) 960 millions or £148 for each family per annum.† Here again our conclusion is easily stated. The rich and middle classes have all become very much poorer; the skilled workers who constitute the great bulk of the nation are scarcely better off than at present; the unskilled and incompetent alone reap any benefit from the change, but the benefit reaped by the unskilled workers is, particularly if we take into account the improvements which their growing sense of solidarity enables them to effect, comparatively small. What now has become of those huge increases of income that are to follow the nationalising of capital? Like the Humbert millions they vanish under the light of

* Ireson, *op. cit.*, p. 38. We believe the sum would be much larger. But we accept this low figure in deference to the socialist case—it leaves a larger sum for distribution among the people.

† The computation might have taken the form that if the skilled workers' families earned £148 a year, the officials' families £230, then the unskilled workers would receive £100.

serious enquiry. They have no existence in fact, or even in possibility; and if untrained people are still found to believe in them it is because such people fail to grasp certain obvious and indubitable facts, such as that the same sum of money which is capable of making a few individuals rich, will not, if taken from those individuals and divided amongst the people, make a whole nation rich, or, again, that the present rich do not consume their whole income, that much of it (in the year 1913 a sum of 350 millions) is turned into capital, that such capital will have to be provided under any system, and that if the rich do not provide it, it must be provided at the expense of the whole community.*

As yet we have pointed to some only of the expenses, which must be allowed for, before distribution of the

* It may interest the reader to compare the following with the computation given in our text: (*a*) If all the money *spent* annually by persons enjoying an income of over £700 a year were divided (the case, of course, is wholly impossible and imaginary) equally amongst the population of the United Kingdom, it would amount to only £27 per family—not a huge sum surely. We say "spent," because what they save becomes for the most part capital used for industrial purposes and redounds to the public good. (*b*) If the total joint incomes, saved and spent, of all those receiving over £2,000 a year were equally divided amongst all classes, the addition per family would not equal £21 a year. And out of the common people's salaries thus increased, provision should be made by government for renewal and increase of capital, the rich being those that now save most of what is turned into capital—(See Ireson, Table A.). (*c*) The total income of Germany in the year 1908 is placed by Stein Bucher (See Webb, *op. cit.* p. 630) at 1,750 millions. The population in that year was 63 millions, or (allowing 4½ persons in the average to each family) 14 million families. Now deducting 300 millions for purposes such as we have indicated in the case of England, we find that under socialism each family would receive about £102. But in Germany numberless artisans' families receive more than this sum. A bricklayer in Berlin or Hamburg can himself earn £2 per week. Given another half-earner in the family and the income will be well beyond the socialist dividend. (*d*) The following quotation will give a rough idea of what, in regard to income, socialism would mean for France: "Were the people of France," writes Flint ("Socialism," p. 179), "to be grouped into households of four individuals each, and the whole annual income of France equally apportioned among them, each of these households, it has been calculated, would only receive about three francs a day. Were the workmen to obtain all the profits of the capitalists for themselves, even in those trades where there are the largest capitalists, in scarcely any case would they receive four shillings a week more than they do."

national income can be effected. Let us now point to some further headings of expense. Up to the present we have made no provision for compensating those capitalists whose property will, under the new *régime*, have been taken over by the State. We have conducted our discussion as if the socialist programme was to confiscate by violent means all existing capital and to pay not one farthing to owners. But how impossible all that is, and how unjust to the socialists themselves will easily be understood. It is impossible because, as Kautsky himself admits, a whole army of owners would instantly be up in revolution, great owners and small owners, owners of industries, partners in industries, shipowners, house-owners, shop-owners, and a million and a half artisans also, or people earning less than £160 a year, who between them own capital (their own savings mostly) amounting to a thousand million pounds.* The suggestion also is most unjust to the socialists whose efforts at economic re-organisation, it is claimed, are inspired mainly by considerations of justice and not of expediency merely. Granted then for the sake of argument that a large number of capitalists have come by their property unjustly, nevertheless, the fact remains that the vast bulk of the existing capital has been justly acquired and will need to be compensated. And on what scale are owners to be compensated? In strict justice they could not be asked to accept a smaller sum than they are now enjoying. But this would prove an intolerable burden to the community. Besides, to compensate capitalists on anything approaching such a scale would put socialists in a position at variance with the socialist principle of the right of all men to equal treatment by the State. For some capitalists earn twenty *per cent.* on their capital, some ten, some five. Let us agree then to compensation at the low figure of two *per cent.*, and to be paid on only ten out of the fifteen thousand millions of capital owned by English-

* Ireson, *op. cit.* p. 151.

men in 1905.* This means that before distribution of the national profits could be considered an additional sum of no less than 200 millions per annum should be deducted from an already greatly shrunken national income, with what effect on the salaries of the 6½ million skilled workers' families the reader can himself readily compute. That income will certainly, allowing for this new item of reduction, stand well below the level of men's present receipts, and not only in the case of the rich and middle classes and the skilled artisans, but also in the case of the unskilled and casually employed. A stage entailing definite loss to every class in the community has, therefore, now been reached, and as yet we are not done with the preliminary expenses of socialist administration or with those reductions in the public revenue which socialism will necessarily entail, every item of which must be fully provided for before the division of the public estate is allowed to be made. Let us rapidly review some of the other headings of reduction that must be allowed for in the public revenue before distribution occurs.

Under socialism an immense decline must necessarily occur in the manufacture of luxuries, of all those things, namely, which only the rich can afford to buy, since under socialism there are to be no rich people in the present sense of the word. Again, there will occur a serious loss of national income due to loss of foreign trade.† A socialist community, however well socialism might work in the domain of home business, could not compete successfully with the thousands of foreign individual producers working against her for capturing the foreign markets. She would, therefore, lose her foreign trade and the present enormous income derived from it. What that loss would mean in the bulk may easily be computed from two very simple facts. One is that the wages paid in connection with exports amounts

* See Ireson, *op. cit.* Table J: also Webb.
† See Flint, "Socialism," p. 169.

at present to a sum equal to one-fifth * of the total wages-bill of the nation. The second is that the total value of the exports from Great Britain in the year 1905 amounted to 330 millions.†

An analogous though quite distinct consideration is that based upon incomes received into the United Kingdom from investments abroad. At present this sum is included in the national income. Under the socialist *régime* it would not. No man would be such a fool as to allow the profits of a foreign business to come into a country where it would immediately find its way, not into the pocket of the individual owner, but into the public treasury, for distribution amongst the whole people. In 1907 it was estimated that the amount of annual revenue received into the United Kingdom from investments abroad was £140,000,000.‡ In 1904–1905 the amount would, of course, be much smaller, since this is a source of revenue that has been increasing very rapidly in recent years. But in that year it should necessarily have reached a very substantial sum, and it obviously forms an additional head under which reduction must occur in the national income, if we are to determine the proportion of the national income of 1904–5 that could be made available for public distribution, had socialism been made the working system of the country in that year.§

Again, a large margin must be allowed for under the heading of defalcations, which, owing to the special opportunities for, and even incentives to, dishonesty that the socialist system will provide, are likely to occur on a much vaster scale under socialism than under our present capitalist system. The special

* See Board of Trade Returns, Blue Book, Cd. 1761.

† Webb, p. 99.

‡ See Final Report on the First Census of Production of the U.K. (1907), p. 32.

§ This argument is developed in a most interesting way by Mr. Mallock in his work on Social Reform (pp. 83 and 123). His computation, however, concerns a later year, viz. 1910.

incentive to dishonesty is supplied in the meagreness of the socialist salaries compared with what each is certain to consider the immensity of the services which he has personally rendered to the State; and the required opportunities must necessarily be many where all the money of the country is handled by men who do not own it, and on whom the owners cannot, as now, keep an ever-watchful eye, there being under socialism no private owners. Most to be feared will be a system of large-scale fraudulency, the possibilities in regard to which may be roughly estimated from an event which is reported * to have occurred in very recent years in America—and of course under the system of capitalist management where only a small portion of the wealth of the country is open to fraudulent handling. Our point here is that under socialism such frauds and defalcations must occur more frequently and with much greater facility since, under socialism, control of the entire wealth of the country is to be exercised not by owners but by agents merely, with no watchful owners to criticise their acts. The occurrence referred to was of the following kind: About forty years ago, at the end of an election, it was agreed that the large speculators "might change metallic silver for gold on the old basis of exchange at the Treasury. This meant simply that on depositing in the Treasury a weight of silver bought in the market for £12 they received gold to the value of £20. This measure was so ruinous to the State that it soon became necessary to limit the present which the government made to a privileged few to the sum of £10,000,000 per annum. When the Treasury was almost exhausted, and bankruptcy threatened, the execution of the bill was (of course) suspended." Now this scandalous piece of piracy might, of course, be used by socialists as part of their indictment of the capitalist system. But to our minds it tells far more strongly against socialism than against

* Le Bon, "Psychology of Socialism."

capitalism. For if these things could happen under our present system where every man is moved by his own interest, and for the protection of his own possessions to keep a watchful eye upon all financial, and particularly large-scale financial operations, how much more easily will they occur where no man is owner of capital in circulation, where the public resources are all in the hands of intermediaries, where a formless and indeterminate and, therefore, voiceless public, is the only body with rights to defend, and where that public is at the entire mercy of a few clever "operators" manipulating the whole business of the country at their will.

Our position, therefore, may here be once more reviewed. In reducing, in accordance with the *unquestionable necessities* of the case, the national income so as to determine the amount which would be really available for distribution under socialism, we reached a point at which we found that not only the upper and middle classes, but the whole body of skilled workers also, should lose by the substitution of socialism for private capitalism. A further *necessary* reduction brought us to the point at which even the unskilled labourers, the incompetents and the casuals ceased to be gainers, and in all probability suffered loss by the introduction of the socialist system. The reasoning contained in the last few paragraphs only serves to emphasise and to increase the certainty of all-round loss under the socialist *régime*, a loss enormous in the case of the present payers of income tax, substantial and most serious in the case of the class of skilled workmen all over the land.

But all these considerations assume a character of secondary importance only, when compared with that which is now to follow, that, viz. of the necessity of *incentives* to industrial progress, and their almost complete absence in the socialist State. The incentives to

labour are in the industrial world what the maintenance of high pressure is in an industrial machine. Any slackening in one, like diminution in the other, renders every other advantage and perfection of the system useless. Without a high degree of pressure, constantly and fully maintained, the most perfectly constructed engine in the world will fail to do its work. An industrial system without strong incentives to hard and unremitting labour on the part of all engaged in it must soon lose in power and life, and the consequent losses in income will as far exceed those which we have already been considering in connection with socialism in the present chapter, as want of steam in a steam engine exceeds in importance all minor defects occurring in the action of the parts. We propose to introduce this most important argument in a manner which may at first sight appear unnecessarily roundabout and indirect.

The considerations set forth in the present chapter as to the deductions that will have to be made from the national income before distribution of it can occur in the socialist State are as a rule almost completely, in some cases completely, ignored in socialist estimates of the probable income of workmen under the socialist *régime*. But there is one socialist writer, the ablest perhaps of the whole school, who has given full weight to the facts narrated in our argument, and his comment on them is exceedingly interesting and will help to introduce us to our final argument based on the absence of incentives to labour in the socialist State. Having enumerated several headings under which reductions will have to be effected in the national income before distribution can be begun, and the enumeration is by no means adequate or exhaustive, Karl Kautsky* goes on to write: "Thus we see that not much will remain for the raising of the wages from the present income of the capitalists, even if capital were confiscated

* "The Morrow of the Social Revolution," p. 18.

at a stroke, *still less* if we were to compensate the capitalists." How then does he propose to make up for this disappointing fall under socialism in the available income of the nation? By intenser effort on the part of those entrusted with the task of production. "It will consequently be necessary," he writes, "in order to be able to raise the wages, to raise at the same time the production far above its present level. Not only the maintenance of the production, but also its increase, will constitute one of the most urgent problems of the social revolution. The victorious proletariat must speed up production as fast as possible if it is to meet the enormous demands which the new *régime* will be called upon to satisfy." Let us examine this last and most instructive device of the chief amongst modern socialist thinkers for restoring to the present level the divisible income of the country, which, under socialism, so many causes will combine to lower.

It should be clear to any thinking man that to speed up industry, in the sense of merely speeding up production, would only constitute a new source of embarrassment and loss in the socialist State. The speeding up of production would of a certainty plunge the nation in bankruptcy unless everything else in the industrial system were speeded up in proportion, unless receipts and profits are "speeded" up to the level of the increased production, unless there is (if we may be allowed to use the word in such a connection) speeding up of management, and direction, and saving power, and assiduous watching of old markets and creating of new markets, so that commodities as they are successively produced may not be left on the producer's hands, unless, in a word, every man in the nation, director, shop-keeper, salesman, workman, is speeded up to put forth not temporarily, but permanently and systematically, the best that is in him for the successful accomplishment of his allotted task. Are the conditions of socialist industry the conditions required for such

effort and such care? A full answer to this question would necessitate some examination of the incentives that now are operative in those three departments of industrial activity on which the systematic development of industry admittedly depends, viz. invention, direction or administration, and labour. It would be easy to show that for invention the incentive of an exceptionally great reward is generally required. In modern times there is very little room left for sudden and startling inventions such as have created great reputations in the past. In modern industry progress is secured by the continued appearance of small interrelated inventions which though insignificant in themselves are yet mighty in their cumulative effects. Moreover these inventions are not the creation of a single illuminating moment but depend on the laborious efforts and the patient trial of many difficult and unpromising years. It is only the hope of exceptional reward that could sustain the spirit of an inventor through these years of trial, and this the programme of socialism essentially excludes. Again, there is the heading of labour: that workman has but little incentive to labour, who knows that the amount of the national income, and therefore that the amount of dividend which each (he himself included) is to receive, depends hardly at all on his own efforts which he can control, but on the combined efforts, idleness, knavery, and waste, which he cannot control, of ten million others, honest men and shirkers all thrown into one, who, as we have seen, will under socialism produce and therefore determine the amount of the national income.

At present, however, we are compelled to confine our attention to one of the three departments mentioned, that, viz. of *direction* or *administration*, on which, more than on any other, success in business and industry depends, and which, as we shall now show, cannot but be adversely affected by the elimination of private ownership and the consequent elimination under

socialism of the owner's rights to the profits, and of his responsibilities for the losses occurring in business. The creation and administration of great industries is the work of prolonged, heavy, uninspiring, and often dispiriting effort, such as is not undertaken by men except with the hope of exceptional reward. Businesses, if they are to be lucrative, cannot be opened without much previous laborious enquiry as to the possibilities of the market. A business opened without such enquiry may be regarded, in nearly every case, as a failure from the start. At present the watchful eyes of thousands of keen business men are open for every movement of the market, and capitalists are always ready to launch out into business at the right moment and in the right way. Any slackening in such watchfulness would mean the beginning of the end of all industrial progress. Then when an industry has been successfully set upon its course, the thousand and one difficulties of administration and direction arise; the thankless and continuous work of controlling men, the hard dry work of fitting prices to cost of production, or cost of production to expected prices, the opening out of new markets for wares produced, the long office hours, the many sleepless nights, the prolonged anxiety entailed when difficulties arise—these are the things, unseen by the public, on which seventy *per cent.* of the chances of success depend in the case of most concerns, and without such watchful and continued effort and pressure no industry or undertaking could really succeed. We must remember also that in most undertakings the margin of profit is small and that it is only by the most assiduous attention to detail that seventy *per cent.* of our businesses can keep afloat.*

Now, under socialism the conditions will not be such as are likely to secure either energy or care in the administration of these great concerns. A maximum of *energy* can only be secured where either the net profits

* See Leroy-Beaulieu, "Le Collectivisme," p. 289.

all accrue or very exceptional rewards are promised to those individuals who have the chief conduct of a business. A maximum of *care* and of *frugality* is to be expected only where the same individuals that control the concern must bear all or a great part of the losses that occur. Under socialism, on the other hand, the men whose duty it will be to direct and conduct the various commercial undertakings of the nation will neither receive the profits nor be charged with the losses, and, therefore, the same watchful assiduity that is normally bestowed upon the direction of capitalist undertakings is not to be expected under socialist management.

These facts being explained we may briefly sum up our position. We saw that before the national income could be made available for distribution under socialism many deductions had to be made. Some of these were necessary from the very nature of commerce itself; others were based on certain inherent weaknesses in human nature. Their combined effect was to bring down the available sum to such a low level that not only the rich must be impoverished, but even the skilled artisans must lose heavily by the elimination of capitalism, and that even the unskilled would either gain very little or lose some portion of their present meagre income. There still remained the question of incentives. In the past, industry has progressed by leaps and bounds under the operation of one great incentive, the hope of personal gain. With that incentive gone, all that watchful care and effort at the thousand different centres of production and administration which alone could render production a source of profit to the nation will have departed, and so the wheels of commerce must slow down, or if they be speeded up, as Kautsky suggests, in the single department of production, they will be speeded up unto destruction. Under socialism, then, we can anticipate no other future for the vast mass of the nation, including even the great artisan class to whom the appeals of socialists are now especially

addressed, than that of misery and utter financial failure. One class will certainly profit by the change, and, it seems to us, only one class, namely, the class of director-functionaries in whose hands the financial resources and the fate of the nation will ultimately lie. These will be the new exploiters of labour, bolder, more selfish, and craftier than the most unscrupulous capitalist of olden days, and there will be no government to check them in their delinquencies, because they will themselves hold the reins of government in their hands.*

A difficulty—theory that absolute loss is impossible.

We do not care to bring this chapter to a close without some reference, however brief, to a certain economic theory which has gained wide recognition of late amongst socialists of a particular school, and by means of which an attempt has been made to undermine the position of anti-socialist writers in so far as they touch on economic theory. The chief economic argument of anti-socialist writers, and the argument that has been given most prominence in this work, is an argument based on the supposition of losses occurring under socialist adminis-

* The socialists have, of course, their incentives, but from what we have said it should be evident that these incentives are not likely to operate either energetically or continuously on any of the three classes of men considered in our text. They speak, for instance, of the "joy of creative work." Now attached to invention in even a minor degree such joy is possible, but there is no joy in administrative work or labour such as we have described. Then there is the "glory and the distinction" of great achievements. We answer there is very little glory either about making ends meet, or about the continued hard labour of the poor. Then finally there is "sympathy with our fellow men," a virtue which does, indeed, often induce men who have no dependence on others to help them in various ways, but which is not likely to be operative when a man knows that his own work in order to be effective depends on the work of others, and particularly when so many of those others are obviously slackers and wastrels. The socialist incentives are incentives to poets and dreamers only, not to an unimaginative business world. If socialism is to induce men to put forth the best that is in them there must be differentiation in remuneration, and this will lead to the establishment once more of economic inequality and of a leisured class, and in time to the return of the old *régime*.

tration, due chiefly to the absence of effective incentives to labour. Now on the socialist side it has recently been maintained that these supposed losses are quite imaginary and even impossible, and that the capitalist appeal to them is due to a confusion of thought as to the relation between capitalistic and socialist conditions. Financial losses, it is explained, are possible under capitalistic conditions of ownership, but they are impossible in a system of public or socialist ownership and administration, and, therefore, the capitalist's argument, which is based on the possibility of such losses occurring, is without foundation.

In the development of this argument it is pointed out that even under capitalism there is no such thing as *absolute* loss, or absolute destruction of wealth, that losses may occur to certain individuals but that other individuals must in every case gain what the former lose. Thus if a man wastes his substance drinking champagne, he personally loses what he spends in drinking, but the champagne manufacturer gains to a corresponding extent. There is no absolute loss in the case. Now under socialism it is pointed out, all capital, *i.e.* the capital of each country, will belong to a single owner, the State, and, therefore, all the departments of business will belong to the same owner, and since loss * in one department is always compensated for by gain in another, it follows, the socialists tell us, that under socialism, no loss of any kind can ultimately be sustained by the State or the community. It would seem, therefore, that a great part of our argument, which is based on the supposition of losses occurring, is without foundation.

This argument, it will be readily admitted, is of the highest importance in connection with the economics of socialism and, therefore, it will be necessary to say something in reply to it. Let us for clearness' sake consider a very simple concrete case of purchase. A

* *i.e.* loss through business failures,

particular individual buys machinery from another individual. He also buys the raw materials of a building —bricks, mortar, timber, etc., and for the whole he pays a sum of £2,000. After a time the venture fails. Production ceases; employees are dismissed; the machines lie idle, rust, and become useless; the buildings fall into disrepair. What now is the amount of wealth available after this event in comparison with what preceded, and what, therefore, is the loss that has been sustained? Before the event there existed two thousand pounds and also valuable buildings or the materials for them, and valuable machinery. Now after the event there is in existence only the sum of two thousand pounds which has been paid to the original seller. The world, in other words, is poorer by a sum equal not merely to the plant which has been lost but to the profit that might have been made out of it had the undertaking been successful. The materials still remain of course; but they are useless and valueless except as scrap. Their value is like that of a dead man compared to a living. A living productive business has been lost, not merely to one individual or group of individuals, but to the whole world. It has been lost wholly and *absolutely*.

What, then, is the essential and central fallacy of this specious objection? The fallacy is this—it represents the wealth of the nation as consisting wholly in the money that passes between one set of hands and another when purchases are effected. That money, no doubt, is saved whether failure subsequently occurs or does not; but what a small fraction such money represents of the total wealth possessed in any country it is hardly necessary to point out. If the only capital which England possessed was the money which changes hands in purchase, England would be a very poor country indeed. The total wealth of the United Kingdom stands at about thirteen thousand millions.* At the end of

* Webb, *op. cit.* p. 81,

1907 the stock of money in the United Kingdom, made up of gold, silver, and uncovered paper, amounted to something short of 166½ millions.* In what then does the wealth of England consist? It consists, of course, in all the things of value possessed by the nation. But for the most part it consists in things wholly distinct from money, in such things as warehouses, canals, railways, mines, factories, the land. These are the living sources of profit from which England's wealth is in the main derived. And where a failure occurs most of these things can be lost absolutely to the nation.

It may be said, of course, that the socialist State would not permit the total disappearance even of a failing or unprofitable industry, that the State would draw money from other departments in order to keep each unprofitable department going. Our reply is, that it is precisely in that fact that is to be found the most terrible and unavoidable danger to commerce and industry under socialist control. Under capitalism if an industry ceases to be profitable it perforce disappears, the only loser in the case being the capitalist who owned the particular industrial concern. Under socialism good money will be thrown after bad, more and more money will be poured into unprofitable undertakings, sometimes in order to keep up employment, sometimes to hide the delinquencies or inefficiency of officials. Should such bolstering up of broken businesses be attempted generally or on a large scale the only result possible is that of speedy and irretrievable bankruptcy. In a perfect system of reservoirs where each department communicates with every other you do not, if everything is in perfect order, lower the level of the water in the system by pouring water from one reservoir into another. But if water is poured from one reservoir into another in order to make up for *leakage in that other*, sooner or later the whole system will be depleted. It will be the same, with the single

* Webb, *op. cit.* p. 416.

unified system of industry in which all present businesses are to be amalgamated in the socialist era. To support one failing department at the expense of the rest will mean the gradual depletion of the whole system. Thus the present difficulty only serves to strengthen our case against socialist finance. Under socialism an all-round uniform level of income may, indeed, be attained. But it will be a level of all-round poverty not of riches. To divide up wealth you must first make it, and under socialism the conditions are not such as to favour its plentiful production.

CHAPTER VIII

REMAINING DEFECTS—SUMMARY OF CASE AGAINST SOCIALISM

In Chapters V and VI we considered the Marxian arguments against private capitalism. Chapter VII, although still occupied with the consideration of Marx's arguments, explained a very grave positive defect in socialism, viz. that under socialism the incomes of all classes in the community, even the artisan class, would necessarily undergo considerable shrinkage, due chiefly to the disappearance of the capitalist incentives to hard and unremitting effort not only on the part of workmen, but also, and more particularly, on the part of the socialist directors of labour. In the present chapter, before attempting to draw our general conclusion in regard to the socialist position, we purpose continuing the positive refutation of socialism which we began in the preceding chapter, by showing that not only will socialism, as has already appeared, involve heavy financial loss to the whole community, but also that socialism is inferior to capitalism as a means for securing that end which it is the chief aim of socialism, as, indeed, of every other economic system, to promote, viz. the satisfaction and contentment of society.

In order to make our position on this point clear it is necessary to preface our argument with a distinction, the meaning of which will easily be understood by all. Economically considered, the public may be viewed under two aspects. All men are either sellers or buyers —either producers or consumers, using these words in a broad sense. In the first place all men are supposed to follow some avocation in life through which humanity is benefited in some way—some are doctors, some lawyers,

some shop-keepers, some labourers, some farmers, some statesmen. All these confer utilities on others, and in that broad sense we may speak of them as sellers or producers. Again, the public are buyers or consumers in as much as they receive the benefits provided by the others, medical attention from doctors, legal advice from lawyers, boots and shoes and other necessaries from manufacturers. This broad distinction will be found to cover roughly the whole field of the economic life of any country, and it will help us to show on broad lines, but yet with some degree of completeness, how little calculated socialism is, in comparison with our present system, to provide the conditions necessary for human happiness, for social contentment, which, as we have already said, it is the chief and admitted purpose of socialism to promote.

I. *The public as workers, sellers, or producers.*

We shall first consider the public as workers or producers, *i.e.* in their capacity as doctors, lawyers, shopkeepers, manufacturers, labourers. Speaking generally, we may truly say that under the capitalist system each man makes free choice of his avocation in life, of his position, therefore, in the world as worker or producer. The range of pursuits open to many men is, of course, limited in a number of ways. Not all men have money enough to enter a profession, for instance; and of professional men only the best competitors can reach the highest places. But all men exercise some choice in determining the line of life which they will follow, and the area of free choice is gradually widening more and more as better educational facilities are provided for the masses.

Now, socialist writers, whilst they bestow very little attention on this very real and unquestionable advantage of the capitalist system, viz. that men are left free to direct their own lives as they think best, make frequent allusion to the limitations which, in practice,

fortune and the mere accident of birth place on the theoretical freedom of individuals under the capitalist system. The poor man's son, they tell us, is, in practically all cases, forced to become a mechanic or labourer; the rich man's son goes to a university and becomes a doctor, an engineer, or a statesman, and on this point they build their general contention that capitalism is opposed to freedom and initiative, especially among the poorer classes.

Now we have already admitted that under capitalism a man's power to control his own career is subject to many and grave limitations, and all we have claimed is that under our present system the individual is *largely free* in the choice of a line of life. But what is the system by which socialists purpose to replace the conditions of the old *régime?* Under socialism it is the government which will decide whether a man shall become a shop-keeper, farmer, fisherman, or stoker, a traveller in Paris, Brussels, or Petrograd, or a clerk in some grimy office in London. In other words, whereas under our present system it is the right of every man to choose his own line of business or profession, and so to attempt to rise above the accidents of birth and fortune and to carve out a career for himself, under the socialist system a man will have no right to choose his own career; on the contrary, he will be compelled to accept any position that is allotted to him by the government or by a few public functionaries representing the government, who will, in the new era, have the right arbitrarily to dispose of the lives and services of every man in the land without thought of his wishes, prepossessions, or even of his capacities.* Socialists may differ very widely about

* The few positions that might be allotted by examination are not worth considering. It is to be remembered that under socialism all will have equal opportunities for education. Under these circumstances any attempt to determine by examination who will be the ministers, who the farmers, who the shopkeepers, and who the navvies and sailors would be absurd.

various parts of the socialist programme. But on this item there is no room for difference. Under socialism the State is to be the universal employer. Every position in the land will be under the immediate control of the State, and, therefore, it is the State that will in the first place appoint men to their various positions, and that in the second place will be responsible for every inequality in the lot of individuals.

A further conclusion also appears. Under capitalism men are to a great extent content to put up with the existing inequalities, content with their own lot, because each man has to a large extent the ordering of his own life, and is prepared to attribute much of the hardships of his life to himself or to fortune; but under socialism men will not be content with their lot; on the contrary, every inequality of position, of labour, of happiness will be charged up to the government; and the public resentment will be all the more bitter because whatever inequalities occur under socialism occur under a system which is built on a theory of the equality of all men, a system which promises equality to all, and because in view of these promises men will, under socialism, have completely given up their right of freely regulating their own lives, and their right of the fair use of their opportunities to enrich themselves without injury to other persons. We should add also that this resulting discontent, resentment and disaffection, are bound to act most unfavourably on industry, since it will be shared by practically the whole population, and in particular by the entire body of workmen, on the wholehearted exercise of whose energies the successful conduct of industry so much depends.*

* Socialists attempt to answer the above argument in a great variety of ways. They maintain, for instance, that under socialism present inequalities will disappear; (*a*) because inequalities of income will be no more; (*b*) because under socialism the miner or scavenger will be held in equal honour with the engineer or statesman; (*c*) because whatever hardships attach to certain kinds of work will be counteracted by shortening the hours of work in these departments.

To these arguments we reply: (*a*) even if inequalities of income

II. *The public as buyers or consumers.*

Under the capitalist system the principle governing all production is that of the public need. Things are produced because they are required and as they are required.* Let any new requirement arise and numbers of competing capitalists are ready with their money to produce the required article, at the cheapest price, and in the form most acceptable to the public. Let it appear that any corner or crevice of human desire, no matter how trivial or exacting such desire may be, is still unsatisfied, and men will be found to risk a great part of their possessions in order to provide the needed commodity or pleasure. Thus, under capitalism, production is made to keep pace with demand, following it up persistently in every direction, and, often, by its insistence and the attractiveness of the wares produced, even creating fresh demands, and satisfying them as they arise. And when the required articles have been produced, they are then circulated with the utmost expedition and set down at the very doors of buyers, each producer being anxious to secure the greatest number of buyers through causing the minimum degree of trouble and expense to the public. Thus the convenience of the public becomes the norm and principle of production, circulation, and supply generally. The consumer is the master, the producer is the servant; and, since the consumers are the "many," and, since by the "producer" here we mean chiefly the capitalist

were no more, inequalities of position will certainly remain. The work of the scavenger must be done as well as the work of the lawyer; (*b*) the hard lot attaching to the lower positions is not dependent on the dishonour in which they are held but on their own intrinsic quality. Most men would consider that there is only one way to compensate for the difficulty and disagreeableness of certain kinds of work, viz. by giving an exceptional reward in money. But such exceptional rewards are excluded by the essential principles of socialism; (*c*) it is the people who occupy the most favourable places who will be in the best position for securing the shortest hours. Who, for instance, is to make the farmer, the traveller, the statesman, or the medical doctor adhere to any prescribed number of hours?

* This holds true even though the object *ultimately* aimed at is the profit of the producer.

(for the wage-earner has nothing to do with determining what is to be produced—he will produce anything he is paid for producing and runs no risk in regard to it) it follows that under capitalism "the many" are the masters of production and supply, and that "the few" are the servants ministering to the wants of "the many." The capitalist system is thus pre-eminently adapted for the securing of the public good—the good of the many. No doubt, monopolies often succeed under capitalism in capturing a particular department of trade, and then the monopolist becomes the master, playing on the peoples' needs, and demanding what price he likes from buyers. But monopolies can be restrained and even suppressed altogether if the people wish. They are tolerated only in so far as they are a benefit on the whole, and as long as they do not try the public too hardly. Monopolies are no necessary part of capitalism and, therefore, capitalism should not be judged by the defects of monopolist trade. There is only one inherent and unavoidable principle in the capitalist system, that, viz. of free competition, and under the system of free competition, as we have seen, commerce is ruled by and directed, in effect, to the satisfying of the public interest and requirements.

What now is the socialist substitute for the system of production and distribution which capitalism has maintained and so successfully developed during the last two hundred years? It is certain that under socialism the public requirements will not be the sole or the chief principle governing production and distribution. The socialist State is *of its nature* monopolist. Under socialism there will be but one producer, supplier, and distributor, viz. the State. Socialism may take a highly centralised form or it may be of a federal type, *i.e.* it may concentrate all production and distribution in one set of hands, or it may make each district responsible for meeting the requirements of the inhabitants of that district. But whatever the system of manage-

ment adopted it is certain that under socialism there will be but one ultimate *owner*, the State, and, therefore, competition will cease with the disappearance of private capitalism. Under socialism, then, there will be no necessity to bring down prices to the lowest level consonant with profit, to produce the most finished article at the lowest price, to deliver it with the minimum of trouble to the buyer, *i.e.* the public, in order to secure the public favour. The public custom or favour need not be striven for in a system where there is only one producer and one seller.*

Under socialism, therefore, the public wants will not be met in the same complete or progressive way as under the system of private capitalism.†

* For another reason also the convenience of the public will not be met under the socialist as under our present system, viz. that under socialism the best men will not be secured for those higher positions through which the gravest public interests are provided for and regulated. Why should any man undertake to face all the trouble, the study, the patient self-denial that are required to fit him for such positions if at the end he can only look forward to an income no greater or very little greater than that of the least efficient member of the community.

† A difficulty suggested by the argument in our text is the following: since the public under socialism will be the masters, may they not dismiss any official whose work is not up to the required standard ? In this way may not production be brought up to the fullest requirements of the public ?

We answer: First, the public at large will, under socialism, have no more control over the officials engaged in production than they now have over the battleships of the nation. Yet the public are now the owners of those battleships, just as under socialism they will be owners of the sources of production. Secondly, how are the public to dismiss those officials whose work is not up to standard ? The public by itself is not in a position to know what is up to standard and what is not. It is the producers, the suppliers, that set the standard. The high standard of comfort that obtains to-day in travelling accommodation or the lighting of houses is due not to the public but to producers and distributors in competition with one another. Without such competition the public would not know of most of the existing comforts. Under socialism, therefore, the officials in charge of production can keep the standard of comfort as low as they like, and the public will not be in a position to check them. As long, of course, as only one or two departments of business are nationalised, a good standard may be reached as in the case of the Prussian railways ; but if every kind of business were nationalised the standard attained in each would not be high.

The Arguments against Socialism Resumed

Having considered the arguments of the socialists, and having also in our consideration of these arguments brought out certain defects of socialism in the preceding and present chapter, we are now in a position to undertake a brief statement of our chief reasons for rejecting the socialist theory.

I. THE FINANCIAL IMPOSSIBILITY OF SOCIALISM

If the system of private capitalism is to be destroyed, then all justice requires that the existing capitalists should be compensated fully for the loss of their property. Now, making the fullest allowances for past injustices on the part of capitalists, it is certain that the justly acquired and justly owned capital of the United Kingdom cannot amount to less at the present day than the enormous sum of eight or nine thousand millions * of pounds; and, therefore, to the extent of this enormous sum capitalists must be compensated before the existing capital can be nationalised. How is this to be done? It can be done in either of two ways only: capitalists can be paid off in coin or they can be paid in scrip—the latter entitling them to a share in the national profits equivalent, or nearly so, to what they have lost through the nationalisation of their capital. But the first method is impossible, since the total amount of coin, gold, silver, and copper, in the United Kingdom does not amount to more than about £130,000,000.† The second method would leave the existing capitalists still private capitalists and private capitalists in the sense most repugnant to socialist feeling, viz. idle capitalists or men in receipt of unearned income, and it is against this class in particular that the

* *i.e.* at least 70% of the whole. The capital owned *by the State* amounts only to about 450 millions (Ireson, Table H), private capital to about eleven thousand millions.

† In 1909 it was £127,000,000. See Webb, *op. cit.* p. 418.

socialists direct their sincerest abuse. In one way only, then, is it possible to get rid of the system of private capitalism, viz. by utterly disregarding all principles of justice, and violently seizing on all private capital, making no compensation whatever to owners, not even to those unfortunate artisans who out of their hard earnings have between them saved money to the amount of a thousand million pounds,* with the interest from which they now supplement their only too scanty incomes.

II. SOCIALISM OPPOSED TO HUMAN WELFARE

In an earlier chapter of this work it was pointed out that the system of communism or of the common ownership of all *property* is opposed to human welfare—that it is irreconcilable with the good either of the individual, or of the family, or of the race at large.

Now, the reader will probably have noticed that in our reasoning about communism the chief examples by which we attempted to demonstrate the mischievous effects of the communist system related not to ordinary property but to the sources of wealth, to capital, to those kinds of property the nationalisation of which is the special feature of the socialist as opposed to the communist programme. And the reason why in treating of communism we could not refrain from introducing examples that concern the sources of wealth in particular will easily be understood. We wished to present the communist theory to our readers in a form that was possible and conceivable, and not intrinsically absurd. Now, the proposal to nationalise all ordinary property such as horses, pictures, tables and chairs,

* *Contemporary Review*, August, 1907. It is chiefly because socialism without confiscation is financially impossible that the more thorough-going socialists, *e.g.*, Belfort Bax ("Ethics of Socialism," p. 76) will have no truck with compensation. These are the only logical socialists. As regards the question of the gradual socialisation of capital see Appendices at end of volume.

books, carpets, etc., is manifestly preposterous and absurd. By no possible stretch of our imaginations can we think of all the citizens of the State exercising ownership over these things either simultaneously or successively. Of its nature the use and employment of these things must be confined to one or a few. But it is easy to imagine the sources of wealth being nationalised. For nationalisation in the case of the sources means not that the land, the mines, the machinery are administered by all, but that the fruits of them are sold and the proceeds divided equally among all, and in that conception there is nothing intrinsically impossible. It was necessary, therefore, if communism was to be represented as a serious theory and not to stand as self-condemned from the beginning, to give prominence to that portion of the communist programme which relates to the nationalisation of the sources of wealth, such as the land, warehouses and machinery—a consideration which seems also to have weighed with Aristotle who in his famous criticism of the communist theory lays stress on that portion of it in which it is really identical with modern socialism, viz. its proposal to nationalise the land, the rest being disregarded by him as obviously impossible and not seriously intended by his opponents.

From all this it will be evident that the case which has already been made out against the communist theory holds also almost in its entirety against socialism. The arguments already given were based on the evils attending the nationalisation of the sources of production, just as well as on the evils attending the nationalisation of ordinary property. And, therefore, there is hardly one of those arguments that went to make up our case against communism that does not also serve to show how wide and insuperable is the opposition between the socialist proposals also and the welfare of the individual, the family, and the race. It is necessary, however, in giving our final judgment on socialism, to recapitulate at least the chief of those arguments, and

formally and expressly to show their bearing on the theory of socialism.

Now in order to understand the true effect of adopting the socialist programme it is necessary to remember that socialism is not a proposal to introduce into our present economic system some new and improving feature which would, whilst leaving that system substantially intact, so alter it as to eliminate most, or all of its defects. Socialism is a proposal to abolish the whole system of private ownership in capital, our whole present economic structure. Let us see what this really means. Private ownership in capital is now thousands of years in possession. A vast and complex edifice of human rights has been reared upon this foundation. To abolish private ownership in capital, as socialism proposes, would be to bring the whole existent edifice of human rights to the ground, and to perpetrate the gravest injustice, not only against present owners of capital, but against innumerable other persons also.

Moreover, the principle of private ownership in capital is a principle that has worked out well for the human race. The structure raised on it is sound and good in the main. Our proof is that under this system the world has made enormous progress, not in one, but in every department of human activity, and its progress has been phenomenal in that very sphere to which the socialist proposals essentially relate, viz. the economic sphere. But a principle that was naturally and intrinsically vicious would not allow of progress, permanent and phenomenal progress, in that particular sphere. It would sooner or later bring forth the natural and proper fruit of all evil and corrupt principles—not economic disease merely, but economic destruction.

Evils have grown up in connection with our present system. They will appear under every system, whether devised by human reason or prescribed by nature, for evil is irremovable from human life. But there is no

evil element in our present economic system for which a remedy cannot be discovered by human reason, a remedy which is consonant with the central and essential principles of our present system. If a large number of men happen to be poor, their poverty can by governmental intervention be removed—if necessary, at the expense of the rich. If they dwell in unsanitary houses government can build them houses. The evils incident to the system of private capitalism are removable evils. They all concern the exercise of what is only a secondary though most important function of any economic system, viz. the *distribution* of wealth. The distribution of wealth under private capitalism is far from perfect. What wrongs there are, however, can easily be remedied. They are fast being remedied even now. But the primary and essential function of commerce, *i.e.* the *production* of wealth, has been not only successfully but magnificently performed under the operation of private capitalism. The wealth of the world is growing at a phenomenal speed. And all classes are sharing in this growing wealth. Some, indeed, are getting much more than they should, which only means that there are disproportions to be removed, adjustments to be made. But to abolish the whole system for the sake of the removable evils attendant on it would be like setting fire to the harvest because some persons get more than others, or poisoning the water supply of a town because some houses are fed with larger pipes than others. The theory that private capitalism ought to be abolished in its entirety because workmen do not get all that they have a right to out of the proceeds is a stupid and illogical theory, and unworthy of reasoning beings. Under our present system there is no defect that cannot ultimately be removed.

And this conclusion in regard to the abolition of private capitalism is strengthened and confirmed when we come to examine the system by which in the socialist theory private capitalism is to be replaced. The abolition of

private ownership in capital might be regarded as not antecedently unworthy of our consideration if what was proposed in place of it was a system offending against no law of justice, a system that widened enormously the area of human liberty, that provided conditions for economic development far better than those of private capitalism, that guaranteed to the vast majority of the people, if not to all, an immense increase in their incomes and the comforts of life. But the promise of socialism falls very far short of this, and its actual results will be the very opposite of this. Socialism, as we shall presently show, violates the most sacred rights of the *individual*, suppresses in him all initiative, all sense of freedom, makes of him an automaton, controlled and directed in everything by others, and in addition, deprives him of the just reward of his labour; socialism violates also the most sacred rights of the *family* as regards property, and so controls the family in its most inner and sacred relations as to threaten the existence of the family itself; finally, socialism, instead of promoting the *general* economic welfare, will induce a condition of all-round poverty, bringing the incomes of the vast majority of the people, including even the entire body of workmen, skilled and unskilled, particularly the former, far below their present level.

Socialism and the individual interest.

Let us first take the case of the *individual* interest and examine just one or two of the chief ways in which that interest is affected by socialism. The individual is provided by nature with a capacity for production, a capacity to turn his money into machinery, to set up businesses, to conduct them successfully, to turn his own possessions, be they great or small, into real and abiding *sources of profit*. This faculty is a function of reason only. The animal cannot cultivate the soil, plant trees, reap a harvest, create a business. It can

only keep or consume what it gets. To turn what one possesses into a source of production or profit is the exclusive prerogative of man. The socialist disallows and nullifies that prerogative. "You may produce," he says, "but only in the interest of, and in the way directed by, the State. The money you have you may keep or spend just as you like. But you must not set up a business with it. You must not create wealth with it. This creative faculty of yours is not any longer under your control. You must only use it if called upon by the State to do so, and then you must use it in the interest of the State alone, not in your own interest. Unless called upon by the State to control and direct a portion of the national property, you may draw a line through all your creative capacities, no matter how great and keen and valuable they are, and no matter how enthusiastic you may be to exercise them. Under capitalism some men have capacities which they cannot exercise from want of opportunity. We, socialists, disallow their exercise whether opportunity offers or not. The material sources of production, the quarries, the coal-mines, the oil-wells we shall most jealously guard and preserve in being. But nature's chiefest source of wealth, the energies and faculties of man, we shall seal up and render useless for ever, except, as was said before, in the case of the few on whom under socialism will devolve the special charge of productive and administrative work." This is the essential and central article in the programme of the socialist. Socialism lays on the will and energies of man fetters more restrictive and galling than those of the hardest prisons.

But then there is the *injustice* to the individual of the whole proceeding. The old philosopher maintained that private property was robbery. But socialism is robbery—robbery of the most flagrant kind. Suppose that under our present system a man had agricultural land and that a neighbour prevented him from using it as such, *i.e.* from cultivating it and appropriating

the fruits, would that not be robbery? What good to an owner is a source of wealth if it cannot be used to produce wealth? The value of a source of production is measured in great part by the fruits which it produces, and to forbid the production of these fruits is to deprive a man to the extent of these fruits of what is rightly his. Now the natural energies of the individual are his own. Also the money which he receives under socialism is his own. To prevent him from turning those energies and that money into machinery, and using them as a source of profit is to perpetrate an injustice against him, to rob him to the extent of the fruits of his own property. Of course, it is not robbery in the technical sense of the word, for the reason that the fruits of which the individual is deprived are not appropriated by others. But the difference is not to the credit or advantage of socialism. In the case of ordinary robbery that of which one person is deprived is possessed and enjoyed by another. But under socialism the fruits of property are not only denied to their owner but nobody else is given the advantage of possessing them—not even the community at large. Under socialism they are not produced at all; the production of them is forbidden by public law. It is almost the same difference as that between taking away a quantity of hay and burning it to the ground, or between robbing a garden and poisoning the ground so that the fruit cannot be produced.

Of course, as usual, it is the deserving workman who is hardest hit by the socialist programme and its prohibitions. Out of his small income the workman often saves a little and turns that little into productive capital. These savings are a source of special profit, and much of the joy of his life arises from the consciousness of that possession. It is his own. The fruits come into him at regular periods. No power in the State can deprive him of his right to them. His property also *grows* with time. It can be made to grow to any dimensions with

care and energy. It renders the possessor independent to a certain degree of the rest of the world. Socialism, by depriving the workman of the right to turn his money into a source of wealth, robs him to the extent of that wealth and condemns him to perpetual and complete dependence on others. "The socialists," says Leo XIII, ". . . strike at the interest of every wage-earner, for they deprive him of the liberty of disposing of his wages, and thus of all hope and possibility of increasing his stock and of bettering his condition in life." *

Socialism and the family interest.

All this refers to the individual interest. But socialism strikes also at the happiness and welfare of the *family*. We may be allowed here to quote the following passage from an earlier chapter in which it was shown that *property* is necessary for the family welfare: "The man who summons children into the world assumes responsibility for feeding and educating those children. And because he has summoned them into life, they have a right to look to him for all that is required for their development and perfection. . . . This responsibility which nature imposes upon the father gives him a right as well as imposes a duty of gathering together a store of wealth and gives him a right of property in that wealth. It is the chief condition of the future security and well-being of his children." Now, "the children whom he summons into the world will themselves, in the natural course of events, found families, and the father has a right to put them in a secure position for beginning their married life. In this matter the needs of children are quite indefinite and indeed unlimited, and therefore a man may go on storing wealth to the end of his life and to any amount that he desires."

* The obvious objections that under socialism the workman will be rich and consequently will feel no need to turn his money into a source of wealth is answered in the preceding chapter.

From the foregoing argument it will be clear that the right of property, in so far as it is based on the family welfare, is in its complete form ultimately based on the *permanence* of the family—its permanence and continuation from one generation to another. The right which the family welfare bestows is a right of storing up wealth and of passing it on from children to grandchildren, and, if possible, without diminution or destruction, just as the family life suffers neither diminution nor destruction as one generation succeeds another. But property has the attribute of permanence only in the form of *capital* or productive wealth. It is only by turning wealth into productive capital that it becomes possible to use it and at the same time neither to diminish nor to destroy it, the fruits which capital produces being used or consumed, whilst the capital itself from which those fruits derive remains whole and intact. A right of property, then, that would exclude its being turned into productive capital would not only be partial and incomplete, but would also fail to secure the true welfare of the family in its capacity as a permanent and continuous social unit. Such a limited right of property would satisfy neither the responsibility nor the rights of the head of the family in regard to his children.

But a much graver injury to the family life than the economic loss it will sustain through the suppression of all private capital has also to be considered, viz. the right which, indirectly, socialism gives the State of control over the family in its innermost and most sacred relations. This argument has already been explained in our consideration of the communist system. But it holds true also of socialism; and its further presentation and development here will serve to emphasise its great importance. Under the present system the father of the family undertakes full responsibility for the support of his children. If the family becomes too large for his re-

sources he either seeks some more lucrative employment or tries to supplement his income in other ways, *e.g.* by means of a small business. But, whatever may be the manner in which he tries to augment his income, the full responsibility for the upkeep of the family rests with the father alone, and, as a consequence, he enjoys the full rights of ownership and control over his own home.

Under socialism the father's position will be very different. For, under socialism, one kind of work will not be more lucrative than another, and private businesses are disallowed. Any additional funds, therefore, that are required for the support of a man's children can come only from the State. There is no other source from which to obtain them. Under socialism the State, though it will compel every man to work, will nevertheless assume the *rôle* of universal provider and dispenser, and, therefore, if additional resources are to be supplied, *it* must supply them. And that additional resources will be required is certain. For, families are not all of equal dimensions. The father of twelve children cannot be expected to be content with the same income as that of a father of two or three, or perhaps no children. Such a system of distribution of the national income would be at variance with the law of the equality of all human beings before the State, a law which is the pivot of the socialist theory. It would mean providing support for some children and none for others in a system which undertakes to provide for all. Under socialism, therefore, money must be provided by the State for every family according to the dimensions of the family.

And in this very responsibility assumed by the State lies the grave danger to which we have referred. There is an old maxim of great importance in Political Science to the effect that all responsibility brings with it a proportionate degree of authority. It is a maxim that holds for the socialist State as well as for any other, and, in the present instance, it leads to a startling con-

clusion as to the position of the family in the socialist State. The man who pays the piper has the right to call the tune. If the State has to pay according to the number of children in the family, the State will eventually see to it that it will be consulted on every condition in the family life, *e.g.* as to whether families are to be set up or not, and in what number, and, most serious of all, what are to be the dimensions of the family. During the first years of socialism the State may not care to put into operation the full rights attaching to its responsibilities in this connection. To do so would be to shock the sensibilities of the greater portion of mankind. But sooner or later it will make its full authority felt. And it will be all the more emboldened to do so from the absence in the socialist State of all religious restraints, which it is the declared intention of practically all socialist propagandists to abolish. The conclusion in regard to the family life scarcely needs to be drawn. Socialism must eventually mean the utter suppression of the family independence and the abolition of the rights of parents in regard to their children, rights that are antecedent to, and independent of, the State, and that are as old as human nature itself. It will also, by placing limitations on the number of children to be brought into the world with their right of support from the State, so restrain the free expansion of the family as to imperil the existence not only of the family but of the race itself.*

Socialism and the general interest.

The foregoing are intolerable evils, evils which cannot be ignored, no matter how great and good the

* It is claimed by many defenders of socialism that that theory is purely economic in character, its principle being that capital should be nationalised, and that, therefore, in its essentials socialism has nothing whatsoever to do with questions of family organisation, and would offer no hindrance to the continuance of present family rights. Our argument in the text will show that there is an intimate connection between socialism considered as a mere economic doctrine and the question of the existence and rights of the family

purpose aimed at in any system of which they are the natural consequences, and they afford clear proof that socialism is not only dangerous but intrinsically wrong, that as a State system it could not be justified in any circumstances.

But for the sake of argument let us here agree to waive the strict demands of the moral law and consent to give fair consideration to all the benefits arising from socialism, agreeing, *i.e.* to ignore the outrages which that system inflicts on the individual and the family, if its other benefits, those, viz. accruing to *society at large* should be of an importance commensurate with the grave violations of justice and morality to which they are supposed to be a set-off. But here we arrive at a position the most extraordinary yet attained in the history of proposals for the reform of human things. In every reformatory scheme involving loss or damage in certain directions it is supposed that the benefits in other directions will be correspondingly great. But in the case of socialism the opposite is the case. The rights and liberties of individual and family in all the most sacred and important relations of human life are here being sacrificed. In one way only could socialism hope, and in one way only does it propose to neutralise or compensate for these invasions of human rights, viz. by all-round enormous increase in the incomes of the whole or nearly the whole people. But it is here that the promise of socialism most clearly and disastrously fails. Taking the conditions of socialism at their very best, and *disregarding the question of the necessity of incentives*, it is clear from our argument in the preceding chapter that no class will be the gainer financially under socialism; on the contrary, the rich and middle classes will be very much poorer, whilst the loss to the working population, and particularly the skilled artisans, will be of the most serious kind. But then, if instead of ignoring the all-important question of the necessity of incentives in industry, we take their necessity into account, and

also their certain absence under socialism, it becomes evident that the condition of all-round loss produced by socialism will be turned into a condition of all-round inevitable bankruptcy, with what disastrous consequences to a great but helpless proletariat can easily be imagined.

It is in connection with this third consideration, that, viz. of the financial position of the nation at large under the socialist system, that workmen are most liable to be misled and deceived; and their position of complete dependence on others for instruction in such matters is fully availed of by the less scrupulous orators and writers on the socialist side. To the ordinary uninstructed workman what inference in the domain of figures could appear more compelling and unanswerable than this—that if the income of the United Kingdom in a particular year was 1,750 millions, that income would, if divided equally between the ten million families that make up the population, afford £175 a year to every family? Now £175 a year is not a huge income for a family, and skilled workmen are often astonished and disappointed when they discover that socialism cannot promise them more than this.* But whatever may be said about the magnitude of the sum involved, the reasoning in the calculation just given *seems* irrefragable. And yet how elaborate is the suppression of facts which it involves! There is no socialist writer who does not know that the whole income of the nation could not be divided amongst the people in the socialist State, no matter how favourable the conditions of industry in that State. They know, for instance, that at least a couple of hundred millions a year will then have to be provided for maintenance and increase of capital out of the national income as it is now provided by the owners

* That is why the socialist orators so often fail altogether to mention figures, and content themselves with telling workmen, not that under socialism such and such a sum will be their income, but that under socialism they will be the possessors of the huge incomes now enjoyed exclusively by the millionaire capitalists.

of private capital. They know that a very large amount of what is now regarded as national income could not be divided under socialism because it represents money that passes from one pocket to another, and is, therefore, counted twice over in estimating the total income of the nation. If out of the pound that I have in my pocket I give ten shillings to a doctor we have between us a sum, not of thirty shillings, but of a pound, and if our joint possessions came to be divided they would amount to a sum of a pound only. So also it is clear that the whole of what is called our present national income, a sum which is made up by adding the incomes of all persons together, would not be available for division in the socialist State. These are only a couple of the reductions that must first be made in the present incomes of the country before we are in a position to compute the sum to be divided under socialism; other headings of reduction are given in the previous chapter; and, taken together, they bring down the amount of money available for distribution under the socialist *régime* to a sum that must seem very disappointing to any intelligent workman who has once allowed himself to entertain the expectations which it is the business of the trained socialist to excite in the mind of the poorer classes. Of all these facts there is no trained socialist that is not fully aware. But the people hear as a rule nothing of them. They are assured on the authority of trusted leaders * that every penny of the present national income will be theirs to have and to spend under the new *régime*, and that, with the teeming millions of present day capitalists flowing into the pockets of all, not only will their old-time enemy class, the rich, be all brought low, but the present poor will all be raised with delightful suddenness, as if by the touch of some magic wand, into the position of rich and independent men. How different are the actual facts of the case. Let even the *whole* present national income be divided

* Or at least the insinuation is freely made.

equally, and, as we said, the present position of the skilled workmen would hardly be improved. Let only some of the more necessary and unavoidable reductions be made, and the incomes of the skilled workmens' families and of all above them will be lower than now. Let all the items of reduction be taken into account, and also the effect of removing the present incentives, and only one conclusion becomes possible as regards the future of workmen, skilled and unskilled, and of the whole nation under the socialist *régime*. Their future will be one of all-round poverty and wretchedness, and there will be no remedy to alter, or power to lift them out of their ill condition.

This, then, is what the alluring promise of socialism is found to amount to when examined in the light of clear and indubitable fact—the certain violation of every essential right of the individual, violation of the most sacred family rights, bankruptcy to the race in the financial sphere, and, we may add, from our reasoning at the beginning of the present chapter, discontent and confusion in every social relation. Is it too much to conclude that socialism is not a system making for human welfare, and that the socialist programme to abolish all private capital is not desirable in the interest of the individual, the family, or the State?

The Limits of Lawful Nationalisation—or How Far may Capital be Owned by the State?

The preceding discussion relates to the socialist programme pure and simple, viz. the nationalising of all capital, or of all the sources of profit, of whatever kind. That programme we have shown to be morally evil as violating strict rights of justice, and as adverse to the welfare of the individual, the family, and the State. But it is evident that though the abolition of all private capital, or the nationalising of all capital is wrong, the

nationalising of some part of the capital of a country is not wrong; on the contrary, there is no country in which the public ownership of capital does not obtain to some degree, and no one thinks of accusing these owning states of injustice or wrong of any kind. The State in Germany, for instance, has its public lands, its forests, its railways; France has a monopoly in the production of matches.

The interesting question, therefore, arises, where is the dividing line to be drawn between what is allowable and what is wrong in the nationalisation of capital; or, how far may a State proceed in the nationalising of capital without injustice to its subjects? And though no very detailed or exact answer is possible to this question, still it is possible to lay down some general principles which will be of use to the moralist in determining, in particular cases, the point at which nationalisation becomes morally questionable or is definitely wrong.

(1) Our first general principle is that any attempt on the part of the State to nationalise even any one business or industry is wrong, if it is meant to lead up to the complete overthrow of private capitalism, and to the final establishment of socialism. If any end is bad and forbidden, then any step, no matter how insignificant or remote, which is meant to lead to the accomplishment of that end, is also bad and forbidden. For the remainder of this discussion, however, we shall abstract altogether from the question of the presence of any such ulterior aim, and shall suppose that each step in the process of nationalisation stands alone, and occurs just as convenience requires and for its own sake only.

(2) That the State can own capital of various kinds is as indisputable as that any group of private individuals can own capital. The State is a moral person, much more so than a private group of owners, and if the latter may lawfully own capital, the same right is not to be denied to the State.

(3) The State has a right even to create a monopoly in certain industries or lines of business, like the match industry in France and the railways in Germany, *but only for very grave reasons, and only after full compensation has been made to existing owners.* There is all the difference in the world between monopolies owned by private individuals and monopolies set up by the State. The private individual or company which establishes a monopoly succeeds in doing so, not by forbidding a particular line of business to others,* but as a result of open competition and by utilising the lawful expedients which competition brings into play; and supposing that only lawful expedients are utilised, a private company has quite as good a right to acquire a monopoly in open competition with others, as an individual has to win a race or to secure a prize by examination. But, on the other hand, when the State contemplates setting up a monopoly in any line of business, it forbids all others from entering that line of business, and thus effects a serious encroachment on the liberty of the subject. Such encroachment can only be justified by very grave reasons of public policy and necessity.

We shall here attempt to give some instances of the kind of reason that would be sufficient to justify the State in setting up a government monopoly.† The State might effect a monopoly in any line of business, State control of which is necessary for the public safety, *e.g.* the manufacture of firearms. Again, where a business is necessary for the public welfare, and where exploitation of the public by a private company would be most injurious to that welfare, nationalisation is justifiable. For this reason it is lawful under certain con-

* Some private monopolies receive protection from government, that is, others are not allowed to set up competing firms. Such protection should only be given for grave reasons, *e.g.* because otherwise no capitalists would be willing to undertake the risks of competition connected with some business of grave public importance.

† See "The Prevention and Control of Monopolies," by W. J. Brown, ch. viii.

ditions to nationalise the means of transit, such as railways. Again, it is lawful to nationalise and set up a government monopoly in a business which vitally affects the health of the nation, such as the milk supply, provided, of course, that there is genuine danger in leaving it in private hands. Nationalisation is also sometimes necessary in order to prevent "a threatened depletion of the national resources." To leave the coal-mines in private hands might in certain cases be full of danger for the community. A frequent cause of nationalisation and monopoly is found in the fact that the State has had to start some very necessary business for which private capital could not be obtained and for which protection is absolutely required if it is to be kept alive. The State often affords similar protection to individual enterprises when, without such protection, the business in question would not be started; and what it can do for the property of private individuals it can certainly do for its own property. Finally, a national monopoly in some lines of business might be necessary as a source of revenue and to avoid additional taxation, or even on account of the difficulty of collecting the taxes in privately owned concerns.

In any of these cases the State might be justified in creating a monopoly in some particular line or lines of business. But a grave reason is required in every case.

(4) But now the question arises as to the limits of lawful State monopoly. That the universal nationalisation of capital, *i.e.* socialism, is unlawful has already been established in the present chapter. But the reasons why it is unlawful are here of great importance since they help us to define the limits to which the nationalisation of capital may lawfully be carried. For purposes of our present discussion these reasons may be said to reduce to two, first, the injustice done to the individual and the family in suppressing the individual right of initiative in the use of his money; secondly, the grave financial loss sustained by the

community at large *through the suppression of private initiative.* Both reasons evidently lead to the one conclusion—every man in the land ought to have *full opportunity* for turning his money into capital or a source of profit; and, arguing from this as premiss, it is possible to state in general terms the limits of rightful State monopoly. To a very large extent State monopolies may be set up in any country without really affecting a person's right of private enterprise and investment. For the one line of business which the State has appropriated, a thousand other lines will generally remain open, in which private persons may invest their savings. But *if State nationalisation should reach a point where the pressure of State restriction begins to be felt by private persons, so that it can no longer be said that these persons have ample and full opportunity for private enterprise and investment, or if such a point has even been definitely approached so that there is danger to the private person's right of free enterprise and investment, then the State has already passed the limits of lawful monopoly. Also, if there be anything which is of such fundamental importance to the economic life of the community that to nationalise it would give the State a kind of modified ownership over all wealth, gravely hamper the freedom of private owners in every department of commerce, and so introduce conditions almost equivalent to those of socialism, then nationalisation in such a case would seem to be forbidden as imperilling the liberty and welfare of the community.**

* We naturally think of the land in this connection. So many, however, and difficult are the questions connected with land nationalisation that we have reserved our consideration of it for the appendix now to follow.

APPENDIX A

The Nationalisation of the Land

The various systems of private ownership.

By ownership of the land, like ownership of any other thing, is meant the right of possession, control, and use. Private ownership means the right of control and use by private persons.

In the case of land various systems of private ownership may be distinguished. There is first the system of *peasant proprietorship* under which the cultivator is sole owner. Then there is the system of *dual private ownership* where a private landlord supplies the capital for working the land, whilst the farmer raises the crops.* It is possible also to distinguish a third system of ownership, i.e. *modified private ownership*, such as exists in Australia where the State, though exercising a certain right of ownership entitling it to a rental from the land, yet gives to the cultivator full actual ownership, bestowing upon him security of tenure, and the full right to use the land as he likes, and to appropriate the fruits.†

The view which is advocated in the following pages is the view that some kind of private ownership is necessary: and the only theory that is here opposed is the theory that the land should be subject to common ownership exclusively, that there should be no such thing as private ownership in land. From the discussion to follow it will be evident to the reader that as between the various systems of private ownership our preference lies with that of simple peasant proprietorship. Speaking generally, this is the system that is most productive in good results, but there are cases where the system of dual private ownership is

* There is another system of dual ownership possible, which though not intrinsically wrong is yet so bad in its results that nobody would advocate it under any circumstances, viz. the system in which a landlord simply draws a rent from the farmer and does nothing for the land. It is not intrinsically wrong because, granted that a man is really owner of the land, he may by special contract lease out the land to another for a certain rental, relieving himself of all responsibility in regard to it. The defects, however, of such a system are too obvious to require enumeration.

† The worst feature of this system as compared with the system of dual private ownership is that, whereas a private landlord can spend money on the soil in improvement, the State cannot or ought not: to do so would mean spending public money in the interest of a private individual instead of in the public interest.

better, viz. where a large amount of capital is required to effect the necessary improvements, and the cultivator is not possessed of this capital. However, this discussion is not a discussion on the relative merits of the different systems of private ownership, but on the system of private ownership itself as opposed to public ownership, and our sole purpose is to show that private ownership of some kind is necessary in the public interest.

Whether the land can be privately owned.

As a rule, the theory of common ownership of the soil is made to depend on the principle that what a private individual has not produced he cannot own. But this principle has already been disproved in an earlier chapter of the present work. Labour or production, we saw, is not the only or even the chief title of ownership. If it were the only title, then there is nothing that could be privately owned, for in everything that is produced by human labour there is always something that is not produced, *i.e.* the material out of which the thing is made, and unless this first becomes private property no part or quality of the object could ever be owned. And what is true of all other kinds of property is true also of the land. The land is produced in the same way that all other things are produced, viz. modifications are introduced into it by labour, through which modifications new values are set up in the land. As Leo XIII writes: "the soil which is tilled and cultivated with toil and skill utterly changes its condition: it was wild before—it is fruitful now." "Though land," writes J. S. Mill,* "is not the produce of industry most of its valuable qualities are." In France, for instance, the net productiveness of the land increased, by cultivation, fifty per cent. between the years 1851–1874.†

Besides, it is necessary to point out that if no private individual may own land because he does not produce it, then neither can any community or *State* own land, because they do not produce it. Indeed, in that case not even all humanity could have a claim to it, because the land in its original condition comes from nature and is not produced by human hands. Moreover, if only what a man produces by his own exertions can be owned, then even when a man sows seed in the land he could not own the fruits—in fact,

* "Political Economy," p. 140.
† L. Beaulieu, "La Répartition des Richesses," p. 110.

he could not take from the land anything but the seed he had put into it. For the seed becomes a plant or a tree, and grows to maturity and to fruit, not by human labour, but almost wholly by the operation of the natural forces inherent in the land, and what is due to these forces, according to the present theory, could not be owned. The full and logical application of the theory, therefore, that the land cannot be privately owned because it is not produced by any person, leads to a conclusion that is not only absurd in itself, but would if practically applied, prove most disastrous to the community. For who would dream of putting his labour into the soil or sowing seed or planting trees if he could not make his own of the *natural* increase? No man sows seed for the purpose of receiving *the same* in return.

Necessity of private ownership for the public welfare

Private ownership was necessary in ancient times, if the fruits of the soil were to be produced. The State at that time could not have undertaken the cultivation of the soil, and unless private owners undertook it the land would not be cultivated. Accordingly, we find that whenever one of these ancient governments effected a settlement it immediately afterwards * proceeded to parcel out the land amongst the people, to be owned and cultivated by private individuals and families, so that the fruits might be produced, and the people be fed.

That private ownership is necessary in modern times is also evident. For instance, in practically all newly discovered or newly developed countries it is found that, in spite of the great facilities which exist nowadays for the undertaking of large national operations, the land, if not taken into private hands, still remains uncultivated and, therefore, useless to the community; for which reason governments which are in any way anxious for the public welfare are always only too willing to give over the land to private individuals, and even to supply the capital with which to work it. "The most prominent economic features in a new country," writes Prof. Bastable, "are abundance of land with scarcity of both labour and capital; land is consequently the cheapest of commodities, so much so, that it is freely offered in full ownership as an inducement to fresh settlers." † And the reason is obvious. No man is

* See Fustel de Coulanges, "Origin of Property in Land," p. 89.

† "Public Finance," p. 174. A lesson may be pointed here. What would be the effect on those who are now, at the instigation of the

going to invest capital in land, and spend his best labour upon it, and effect permanent improvements in it, unless the land is his own property. Why should he work and undergo expense in order to enrich other people? It is only by being made owner of the soil and possessing full security of tenure that a man can be certain that the fruits of present labour and present expenditure will be his own, fruits, be it remembered, that on the one hand, often do not appear until many years after the expenditure is undergone, and, on the other, that often are permanent once they do appear, so that only an assured permanent occupation of the soil can secure to a man the full ownership of that which is his own.

It is plain then that unless a man is owner of the soil the best will not be done for the soil. On the other hand, given ownership, and then nothing will be spared in the way of labour and expense. The poorest lands in Europe have been turned by private ownership into land yielding the richest harvests. "There is not a foot of waste land in the Engadine," writes Mr. Wallace,* "the lowest part of which is not much lower than the top of Snowdon. Wherever grass will grow there it is, wherever an ear of rye will ripen there it is to be found." In Norway where enormous results have been attained in the domain of agriculture, the effects are due to one cause only, viz. that the people "feel as proprietors who receive the advantage of their own exertions."

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public authorities, undertaking the cultivation of the soil in new countries, effecting permanent improvements in it by their money and their labour, and thus turning it from a non-paying into a paying concern, if, when finally it was turned into a source of wealth, the public should cry out: Is not the land for the people? Was it not given by God for the use of all? Why should any individual own it? The principle of land-nationalisation, that private persons should not be left in ownership of the soil, is an outrageous and scandalous violation, not of justice only, but even of common decency. Of course like every other shibboleth this also has in it some element of truth. It is true that the land was given by God that the people might have food, clothing, and the other necessaries and comforts of life. What is often forgotten is that it is only by placing the land in the hands of private owners that its fruits can be produced for the race in plenty. "The earth," writes Leo XIII, "though divided among private owners, ceases not thereby to minister to the needs of all, for there is no one who does not live on what the land brings forth." And, as another writer says (Mr. Flint, "Socialism," p. 148), "if, as socialists remind us, God made the land for the good of all, He cannot have so given it to all that it could benefit none. And certainly it is through land becoming the property of some that it can become profitable to any."

* "Land Nationalisation," p. 140.

The same is true of Germany, of Belgium, of France, of the Channel Islands. Under private ownership the worst lands in Europe have been turned into sources of abundant wealth. "The magic of property," says Arthur Young, "turns sand to gold."

And this necessity for private ownership becomes more and more evident as the population of a country grows and its commercial system develops. In a developed country intensive cultivation is absolutely required if the land is to be made to yield a profit and if the population is to be maintained. Intensive cultivation is required not only in the older but also in the newer countries in spite of their vast tracts of cultivatable land. "In America," said Sir H. Plunkett,* "it is recognised that the increase in population during the last decade had so outgrown in proportion to the food-production that unless remedies are forthcoming the United States would not be able to feed itself, and, instead of exporting food supplies, would have to import them." But intensive cultivation implies, first, the effecting of continuous costly improvements, and, secondly, the fullest and most whole-hearted labour and care, not for a period only, but continuously, on the part of those who cultivate the land. For the essence of intensive cultivation is that the best that is in the land should be got out of it; also that capacities which are not naturally in the soil should be created in it by human exertion, *i.e.* by artificial enrichment and by the exercise of continuous care and labour. Without such expenditure and such care much land will remain useless; much more will remain far below the full level of cultivation.

The conclusion to which we are led by all this reasoning is that private ownership in land is necessary for the public welfare. We do not say under what conditions private ownership to be beneficial ought to be exercised. We claim merely that private ownership *of some kind* is necessary. It is necessary if the crops are to be produced and the world made richer from the land.

Inefficacy of the methods proposed for eliminating present private ownership.

The conclusion to which we were led in the last section may be confirmed by consideration of the methods proposed for getting rid of the present owners. For it must be ad-

* At London, March 15th, 1913.

mitted that in most countries the land is at present owned by private persons, and these must first be removed from their position as owners before the land could be turned into national property. For this end there are only two methods possible, the method of confiscation and the method of purchase. Now from what has already been said it will be manifest that simply to confiscate all present private property in land, *i.e.* to take the land from the present private owners without compensation of any kind, would be a great and intolerable injustice which no reasonable person would think of advocating. But there are writers who advocate the compulsory appropriation by the State of the whole land of the country, due compensation being made to the existing owners. But this is impossible, or, at all events, if carried out, would be a wholly unprofitable transaction. The disadvantages, however, to which we here allude are not the disadvantages that we have already discussed, viz. that if private ownership happened to be abolished, the land would not be properly worked (a position which we think has already been made abundantly clear) but the special disadvantage that the public purchase of the lands, even if it could be accomplished, would lay such a burden on the community as would make the transaction wholly unprofitable if not a definite source of loss to the nation. There are, of course, cases where *some* of the owners have been bought out by the State, as in Ireland, where the landlords' interest was purchased so as to turn the tenants into full proprietors. But this meant buying out some of the owners only; and, besides, the purchase made in the case of Ireland was *largely* effected by making the tenant farmer the buyer, the expense of purchase being borne, not by the community at large but by the tenant himself whom the State merely helped to buy out the land, and to whom it *lent* money for the purpose. But, as we have said, the attempt to buy out at the public expense all the landowners in any country would be an immense transaction, probably impossible, and certainly unprofitable. Let us take the case of France. In France a sum of twenty million pounds is annually sunk in the land for purposes of improvement.* Not all of this, of course, is permanent improvement. But much of it is. In fifty years these accumulated sums would amount in the way of permanent improvement to perhaps five hundred millions. Even if in the purchase of the land

* L. Beaulieu, "La Répartition des Richesses," p. 110.

no other compensation were to be made than the valne of the improvements during these fifty years, how closely allied to the impossible the transaction appears! And, if possible, how utterly unprofitable! The net profits of the large landowners in France do not amount to four *per cent.** on the outlay in improvements. Now, in order to buy them out, money should be borrowed at from four to four and a half *per cent.* The purchase of their interests, therefore, would mean borrowing from Peter to pay Paul, with definite loss in the transaction. Or let us take a case more favourable to the socialist schemes. What would it profit the community at large if the interests of the landlords in England were acquired by public purchase? Money should be borrowed at least at from four to four and a half *per cent,* and by means of this money, the public would become possessed of the present net profit of the landlords.

And what is that present net profit? According to Mr. R. J. Thompson † the net return to the landlords of England and Wales after allowance is made for capital spent in drainage, fences, etc., is at the low rate of £5 8s. 4d. *per cent.* Such purchase would obviously confer little or no gain on the community. The purchase, therefore, even of the landlords' interests in England, would hardly be a source of profit to the country, whilst to purchase all titles would be next to impossible. But, as was said before, even if these titles were appropriated by the community, and all private ownership in the land was eliminated, the community at large would be finally the loser, since without private ownership the proper cultivation of the land would not be secured.

The proposed methods for administering the land under the system of public ownership.

Just a word on the several possible methods for cultivating the soil, when private ownership has been eliminated. It is evident from the consideration of these methods that cultivation under the socialist *régime* will be wholly impossible. The possible methods are, first, cultivation by salaried officials; second, part appropriation of the harvest by the cultivator.‡ If the land is to be tilled by official farmers

* L. Beaulieu, "Le Collectivisme," p. 38.

† Paper read before Royal Statistical Society of London (Dec., 1907) and now published in their journal.

‡ We pass over the case in which the farmer owns the fruits, but pays a fixed rental to the government as in Australia, for that, as we have already said, leaves the farmers, once they are given fixity of tenure, private owners of the soil.

and all the fruits are to be sent to a great central depot, the cultivators receiving a regular salary, then there is no incentive to do more than what entitles the cultivator to this guaranteed salary. Moreover, the entire fruits will not go to the government, and the net result will be that the farmers, as well as receiving most of the fruits of the soil, will also receive a salary for producing them.

The second system is no better. If the farmer is given a certain quantity of fruits by way of return for his labour he will produce that quantity and as little as possible in addition. Moreover, of this addition he will appropriate as much as possible. Besides, in the production of it he will have little care for the expenses used up in production, and so the net return to the government on what it pays out will be exceedingly small. Of course it is possible to imagine a farmer undergoing all expenses himself, being left in entire possession of the fruits, and then paying the government a small proportion of the net return from the land by way of rent. But that would leave the farmer private owner ;* and, also, in a country like England the question would still arise whether it was worth while purchasing the interests of the landlord for the sake of receiving this rental.

Short, then, of some system of private ownership, at least such a degree of it as obtains in the Colonies, in which the farmers are given security of tenure and have full control of the land and of the fruits, it seems impossible to devise a method by which men can be induced to cultivate the soil on terms which will render it a source of public profit ; and, therefore, if private ownership should ever be abolished in land, and the land taken over by the community, the great difficulty for the community will be to know what to do with it. It seems to us that what must happen is a gradual reversion to the system of private ownership under peasant cultivators enjoying at least security of tenure.

Our reasoning on this whole question of land nationalisation has necessarily been of the briefest kind. But it will suffice to disprove the two cardinal tenets of the theory of land-nationalisation—viz. first, that the land cannot be owned by private individuals because it is not produced by human labour ; and, secondly, that the land under the system of public ownership would be more beneficial to the community than under the system of private ownership.

* It would be the mixed system adopted in Australia except that in Australia the rental is a fixed sum.

The conclusion to which our reasoning in the present discussion leads us is that though certain evils attach to the system of private ownership in land, *e.g.* that in some * countries the proportion of the population living by the soil is undoubtedly too small, nevertheless, the system of private ownership is the system best suited for the attainment of that end for which the soil is primarily given in the scheme of nature, namely, the production of the fruits of the earth and their enjoyment by the human race.†

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* In England this is in part due to historical factors, in part to industrial conditions, and in part to want of security of tenure on the part of the farmer. Of course, if a farmer is to be interested in his land he must have security of tenure. But it is to be remembered that in regard to the number of persons that live from the soil England is in quite an exceptional position. In the United States there are about five million holdings, and so the number of families in occupation of the soil in America must be very large. In Germany 86 per cent. of the soil is owned by occupiers, and in 1895 there were about six million holdings (Webb, *op. cit.*). In France there are about six million families in occupation (Mermeix, "Le Socialisme," p. 189). In Ireland there were in 1912 about 550,000 families occupying the soil out of about 800,000 families constituting the entire population. We admit, of course, that not all of their holdings are self-sufficing.

† After all that we have said on land nationalisation it will not be necessary to make a special examination of the Single Tax theory connected with the name of Mr. Henry George. Its first supposition is that the land *in so far as it is the work of nature* cannot be privately owned, production, Mr. George asserts, being the only rightful title of ownership. Then its proposals are deduced. They are first to pay the landlord for all the improvements he has made in the soil, to leave the cultivators owners of the soil, and owners of the fruits, but to put a tax upon the produce of the land corresponding to the original values of the soil, its values before human labour was spent upon it. These original values, he declares, represent so great a proportion of the total produce of the land, that when they are taken from this produce they will suffice to pay all the expenses of the State without resort to any other sort of tax. Hence the name of "single-tax." As a result of course, since most of the produce of the land will go to the government by way of tax, not much will remain to remunerate the farmer for his work.

Our reply is obvious. First, it is utterly untrue that the land, even so far as concerns its original values, cannot be owned by private persons. This we have proved in the course of our discussion on land nationalisation; secondly, if the farmer is left only a small portion of the produce of the land as remuneration for his work he will not spend money on, or give his labour to, the land. The Australian government cannot get men to cultivate the soil where the rental paid is more than two or three per cent. of the capital value; thirdly, the figures given in the text will show that the original values of the soil are not large in comparison with those created by human labour. The productiveness of the land in France was increased in the space of twenty-three years by fifty per cent. Indeed, we are not without

APPENDIX B

Nationalisation of the Coal-Mines

The reader may wish for a brief answer at this point to the question whether the coal-mines ought to be nationalised. Already we have pointed out that nationalisation might be a good thing in certain extreme cases (full compensation, of course, being made to owners), for instance, where nationalisation of the mines is necessary in order to prevent the too rapid depletion of the national resources in coal, or in order to provide an assured and constant supply of coal in time of war.

But apart from such extreme cases it is pretty clear that the nationalisation of the coal-mines, in England at all events, would be of no value to the nation and could hardly be effected without injustice to the existing owners. Unthinking persons are wont to look on coal-mines as sources of immense wealth to their owners, of wealth the acquiring of which is attended by no financial risk of any kind. As a matter of fact, enormous sums of money have to be spent on coal-mines before they can become a source of profit to their owners, and many of the collieries in England are not at present a source of profit. "Many collieries," said Mr. D. A. Thomas, addressing the Consolidated Cambrian Company (Feb. 24th, 1915), "on last year's working would pay no dividend at all on their ordinary shares." And Mr. Mallock * quotes a case, which even the labour leaders regarded as representing the *normal* conditions, of a coal-mine the total receipts of which amounted to £710,000, of which £631,000 went in wages only £39,000 being paid in dividend to the shareholders.

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absolute figures as to the value of the soil apart from cultivation. Whereas it is known that the agricultural products of Great Britain are about £225,000,000, the original value of the agricultural land in England and Wales is computed by Mr. Thompson in the paper already referred to, to be about six millions. The original natural values of the soil thus represent a very small proportion of the present productiveness, at least in the case of agricultural land. Fourthly, this figure gives no hope that by means of a single tax on land the government can pay all the expenses of the State. Even before the great war (1914) the expenditure of Great Britain and Ireland was close on two hundred millions, whilst the total original land values, including not merely agricultural land, but those of the mines and the building-sites, was only about fifty millions (See Harold Cox, "Land Nationalisation," p. 134; also Inland Revenue Report, Cd. 2,228, p. 205).

* "Social Reform," p. 266.

The significance of these facts is obvious. On the one hand, they make it clear that if in the olden days the mines had not been opened by private owners they could not be opened at all, such are the risks run and the care required to make a mine a paying concern, so that to confiscate the mines, now that the mines have been opened by private owners, would be a scandalous piece of brigandage, and would be sure to do immense harm to business generally by breaking down the confidence of the people. On the other hand, to purchase these mines would, judging by the figures we have quoted, be of little or no financial value to the State. And the value of such purchase will seem all the less when it is remembered that the mines in England have been working for a considerable time, and that a mine, unlike other sources of wealth, decreases in value according as it is worked. In many of the English mines the cheaply-worked and more valuable seams are now exhausted. Consequently to take them over now would be to take over a property already much depreciated in value.

APPENDIX C

The Unearned Increment on Building-Sites

To *nationalise* the building-sites themselves would be quite impossible. It would be impossible, for instance, for the government to enter into a bargain with the land-owners for the purchase of every plot of ground in the country on which a house happened to appear. Even the trouble and expense of acquiring these sites, not to speak of their administration, would be very great.

What, however, is seriously proposed is *to put a heavy tax* on all unearned increments on the value of the building-sites; and this, since these unearned increments generally occur in cities or their neighbourhood, would, it is said, to a large extent, define and limit the area within which purchases by government might be made.

Now it is evident that unearned increments on land are not to be regarded as unlawful in any way. They are increments in value due to increased demand, and they are just as lawful as increases in the value of any other commodities due to increased demand. What is wrong about them is that they are so often excessive. Eggs that at one time are sold for twopence could not at another time be

sold for a pound, no matter how great the demand. There is a just price which ought not to be exceeded by the seller, and this price, even after increment occurs, always bears some proportion to the original value of the article. On the other hand, in the case of building-sites, the price demanded is often a hundred times greater than the original value, and often no limit in the price demanded is observed except the limits imposed by the necessities of the buyers. This is altogether unreasonable and wrong.

Though, therefore, what is spoken of as unearned increment in land is not unlawful, still in dealing with, and imposing taxes on, increments in the values of building-sites, government ought to be given a very free hand. For, first, a good deal of money would thus accrue to the community; and, secondly, such a tax, particularly if it is made progressive, would help to prevent the extortions which at present are only too common in cities, extortions which go very far to prevent the erection of useful and necessary buildings of various kinds, and, as common sense will show us, the burden of which has in the long run to be borne for the most part by the poorer classes, in the increased rents they have to pay, increased food-prices, and their diminished weekly wage.

APPENDIX D

Theory of Primitive Communism in Land

The theory that all land originally belonged to the community and that private ownership in land is of comparatively recent origin is obviously of great importance, not only in history but in Moral Science and Economics also. Here we are interested in the theory on its moral side chiefly. "In all primitive societies," writes M. de Laveleye,* "the soil was the joint property of the tribe and was subject to periodical distribution among all the families, so that all might live by their labour as nature has ordained." He instances a number of alleged present survivals of this ancient system, and also gives documentary proof of its original existence even in countries where no trace of communal ownership now remains. He maintains that there can be no doubt that communal ownership once existed in

* "Primitive Property," preface.

Russia, Switzerland, Java, India, Germany, amongst the Celts, and even in Greece and Rome, thus establishing a strong presumption that in the earliest period of man's existence communal ownership obtained universally, to the complete exclusion of private ownership. And though M. de Laveleye does not recommend a return to this communal system, he yet considers that it is more natural than private ownership, and his work has been utilised by other writers to establish the contention that communal ownership is preferable to private ownership, as more in accordance with natural law.

Reply.—M. de Laveleye's theory which at one time commanded almost universal acceptance amongst students of ancient history, may now be regarded as on the verge of becoming obsolete. All recent investigation into ancient forms of ownership has favoured unreservedly the view that private ownership in land preceded common ownership, not only in general but also even in the special cases appealed to by M. de Laveleye in support of his theory. But though this theory is now nearly obsolete, nevertheless a few words will be required here upon it—first, as to the exact bearing of the theory favoured by M. de Laveleye on the general moral problem of the right of private ownership in land, and then, secondly, on the special question of history, whether viz. public ownership is more ancient than private ownership and whether it ever obtained universally in the world.*

(*a*) It is now universally conceded, and has been conceded even by M. de Laveleye himself, that wherever communal ownership in land has obtained, almost in every case, the land-owning village has consisted of people united by blood, and forming between them one large family. Thus in the case of the Russian Mir, M. de Laveleye writes: "the patriarchal family is the basis of the commune; and the members of the Mir (the village community) are generally considered as descended from a common ancestor. Family ties have maintained a force among the Russians, as also among the Slavs of the Danube and the Balkans, which they have lost elsewhere. . . . All property is common. There is usually neither succession nor partition." But it must be conceded that ownership by the family, however large, is a very different thing from public ownership. If at

* Section *a* will be devoted to the consideration of the first of these two questions, section *b* to the second.

present a portion of land were in the possession of a single family and if, as the children married and the family grew, the land by mutual consent or by direction of the law remained undivided, the whole family participating in the fruits, no one would consider such a form of ownership as public or common. It would be regarded as simply a case of private family ownership.

We do not, of course, maintain that such cases of common ownership as at present exist, or alleged cases of it in the past, are always to be explained as a survival of ancient family ownership. In England, for instance, the serfs were often allotted a portion of land by their over-lord to be held and used in common by them ;* and often certain lands were held in common for the simple reason that nobody had ever positively appropriated these lands. Thus in most countries, side by side with the system of private property, there existed also cases of communal ownership which could not be explained as instances of private family ownership.† But none of these cases afford the slightest ground for believing that originally all land was held in common. On the contrary, they are practically all off-shoots, or bye-products of private ownership whether by individuals or families.

(*b*) The historical question proper, whether as a matter of fact all land was originally held in common, can only be treated here in the very briefest manner. For fuller information on this difficult and important subject the reader is referred to the various authorities mentioned in the notes to the present section. That private property in land existed and was accepted by the people as the *traditional* and *normal* form of ownership in the earliest periods known to history can easily be established.

The Jews, for instance, admitted the right of private ownership, as is proved by Abraham's purchase of a field from Ephron, and as is also abundantly evidenced in the law not to covet one's neighbour's wife, nor his house, nor his field.

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* See Seebohm, "The English Village Community."

† In ancient Ireland these commons were annually re-divided amongst the people of the township, a fact says Prof. O'Sullivan (Preface to "O'Curry's Lectures," second series) which gave rise to the idea that all land was held in common. See G. Sigerson, Land Tenures of Ireland.

Concerning Egypt there is an abundance of historical evidence both sacred and profane. From sacred history, for instance, we have the story of the sale of private lands to Joseph by the Egyptians. Profane history provides us with innumerable examples of private property, one of which only needs to be mentioned. In his "Ancient History of the Monuments" (Vol. on Egypt, p. 31) Mr. Birch * refers us to an ancient record dating as far back as the reign of Senefru (3000 B.C.) in which a certain official is recounted as the private owner of land, "some of which came to him by hereditary descent, whilst some was the gift of the monarch."

The history of Babylon supplies innumerable proofs that private property was the settled system of the nation even at the very beginnings of history. In his work, "A History of Sumer and Akkad," † Mr. L. W. King writes, "the earliest written records of the Sumerians," whose political career, as Mr. King explains in his preface, preceded the Babylonian monarchy, "which we possess, apart from those engraved upon stone, and of a purely votive character, concern the sale and donation of land." He then gives instances of private property which brings us back to 3,000 B.C. Boscawen, also, in his interesting work, "The First of Empires," ‡ refers to inscriptions dating back to 3,800 B.C. in which plans of private estates with the names of their owners are fully described; and in "Records of the Past" (New Series, Vol. III.) there are reproduced a number of ancient "Babylonian agricultural precepts" (based on the system of private property) from an old mutilated tablet in the British Museum which brings us back to 3,800 B.C. At this early period, therefore, in the history of the race, private property seems to have been the *normal* and *accepted* system, whilst of a general system of communal ownership proper, if ever it existed, no trace seems to have remained.

And what we say of the private economical relations of the Babylonian people we say also of their legal system—

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* See also Birch's "Egypt from the Earliest Times." The reader who wishes to realise the great antiquity of private property and the place it held in the economic system of the world, even at the very dawn of history, should consult two very delightful series of books—one, "History of the Monuments," in which the proofs are narrated, and the conclusions drawn; the other, "Records from the Past," in which one is brought into contact with the historical sources.

† Chapter on "The Dawn of History."

‡ p. 144.

the laws of Babylon were based upon the understanding of private ownership. In the oldest code of laws known to history—the code of Hammurabi * (2,285 B.C.) there are numerous injunctions as regards the management and sale of private lands, for instance, that "a votary merchant or foreign sojourner may sell his field," all of which injunctions prove that private ownership obtained not merely at the beginnings of history but also at a much earlier period, since the legal systems of the East are, above all things, conservative, and are in every case a reflex of customs and of a system far older than themselves.

(*c*) *The many instances of common ownership* alleged by M. de Laveleye are, as we have already said, no longer regarded as proof either that the system of common ownership originally obtained universally in the world, or even that it preceded the system of private ownership in the particular countries where something like common ownership still exists. On the contrary, all recent investigation into the origin of property is regarded as leading to the conclusion that, even in the countries instanced by M. de Laveleye in support of his theory, private property preceded the system of common ownership. The steps, for instance, which led to the establishment of communal ownership in the case of the Russian Mir, which occupies so prominent a place in M. de Laveleye's discussion, are now well known.† These communal lands were once the private property of the Russian nobles. The peasants who tilled these lands were

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* "The Oldest Code of Laws in the World," translated by C. H. W. Johns, M.A.; see also Cook, "The Laws of Moses and the Code of Hammurabi," p. 17. In the "Letters of Hammurabi" (ed. by L. W. King, p. 28) it is narrated how in "the district of the town of Dun-gugurri the ownership of the land by Ea-lu-bani is ancient for on a tablet it is ascribed to him"—a very interesting narration. Further ancient references from the tablets in the British Museum, recording contracts for sale of land are given in "Records of the Past," and should be consulted by the reader.

That private property was the admitted system of land ownership in Assyria at the earliest historical period is proved by documentary evidence similar to the above. For the references we can only refer the reader to G. Smith's "Ancient History from the Monuments" (Assyria), and "The Annals of the Kings of Assyria," by Leonard King (see *e.g.* p. 252).

In connection with this whole argument we have to express our great indebtedness to Father Cathrein, S.J., for the guidance given us in his work, "Moralphilosophie," Vol. II.

† See Art. by W. G. Simkhowitch in "Handwörterbuch der Staatswissenschaften."

at that time freemen, coming and going when they willed. Then at the end of the sixteenth century the peasants were forcibly attached to the soil by law. At the beginning of the eighteenth century came the well-known poll-tax of Peter the Great, and many writers are of the opinion that it was on that occasion that the tenants threw their various holdings into one, under a system of common ownership. Whether this is correct or not it is now certain that the system of common ownership in the Russian Mir is of quite recent origin. In a recent work upon the subject Jan St. Lewinski writes:* "The European Russian Village Communities" [with their common lands] "did not exist in the olden time: they originated and developed only out of private property and since the sixteenth and seventeenth centuries," and, having reviewed the other instances mentioned by socialists, he gives us as his final general conclusion: "individual ownership is the primitive and natural form."

Want of space forbids our discussing at any length the other instances mentioned by M. de Laveleye. But a full and very able discussion on them will be found in Fustel de Coulanges' work, "The Origin of Property in Land." More recent information even can be acquired from St. Lewinski's book already mentioned.† In practically all the cases mentioned by M. de Laveleye any traces of common ownership that still survive are simply relics of an ancient family ownership. This is obviously true, *e.g.* of the Balkan States, of India, and of the Celts.

But a special reference to the land system of the ancient Celts may well be allowed in a work emanating from Ireland. Among the Celts land was formerly vested in the family to four generations. And even this title, dividing the ownership of the land among so many, had rather a legal than an economic significance. Its principal use was to determine ownership in case of dispute. In reality, however, and in practice each single branch of the family owned and administered its own share. In Irish history there is nothing whatever to favour the theory that originally all the land was the joint property of the whole people or even of the people of a particular district. The theory that originally in Ireland all land was common is, indeed, based on pure

* "The Origin of Property," p. 29.

† And from various works published by Prof. Ashley, *e.g.* his introduction to Fustel de Coulanges' work already quoted, and his own interesting book: "Surveys, Historical and Economic."

misinterpretation of a very simple fact. In Ireland, as in most other countries, there were always some common lands existing side by side with the private estates. Such common lands exist to-day and are of exceeding great use wherever they are found. Now, in ancient Ireland these common lands were annually distributed, and this annual distribution has been erroneously taken by certain modern writers as proof that the whole land was divided annually and, therefore, could not have been owned by private individuals. See interesting discussion on this whole subject in Dr. Sigerson's Land Tenures of Ireland ; also "A Social History of Ancient Ireland," by P. W. Joyce, Vol. I., p. 184.

CHAPTER IX

ON CONTRACTS

DEFINITION

CONTRACT is defined as a mutual agreement between two or more persons concerning something to be done or omitted, and productive of an obligation in justice in one or both of the parties.

First, contract is an *agreement*, i.e. an assent of two wills to the same object. A promise, for instance, which is not accepted is not a contract, there being assent on the part of one will only. *Secondly*, this agreement must be *mutual*. Two wills might just happen to assent to the same thing, but double assent of this casual kind is not a contract. In a contract the assent on one side is given *in view of* the assent given on the other. This is what is meant by mutual assent. *Thirdly*, contractual agreement begets an obligation—an obligation in justice. Not every obligation is an obligation in justice. If one man promises to go for a walk with another, he is bound, if he can, to keep his word—but, in truthfulness only, not in justice. If he fails to keep his word he has not violated any right in justice of the promisee. His promise, therefore, is not a contract. We should add that, generally speaking, rights in justice arise only in cases in which there is question of an object or utility or a service which is *pretio aestimabile*, as will be seen when we come to speak of the object of contract. *Fourthly*, the *obligation* in justice which is necessary to a contract may be on one side only. It is only assent to the object of the contract, not obligation, that is required on both sides.

The above definition implies certain conditions of

contract which must be here briefly explained. They relate :—

(A) to the contractual act—the act of agreement or consent ;

(B) to the object of this act ;

(C) to the contracting parties.

(A) Consent

THE PARTS OR ELEMENTS OF CONSENT

The two parts or elements of contractual consent are *offer* and *acceptance*. These are present in every contract. In the contract of promise, for instance, there is offer on one side and acceptance on the other. In buying and selling, these two elements are present on both sides. No contract is to be regarded as valid or complete unless an offer of some kind is made by one party and accepted by the other.

Two important questions arise in relation to these two elements of consent, viz.—when does offer cease ? and, should the act of acceptance be brought to the knowledge of the offerer ?

(a) *Cessation of offer.*

An offer remains open so long as the offerer wishes, subject to the duty of not injuring the other party. Ordinarily, it ceases in any of the three following ways—by revocation, by lapse, by rejection.

An offer can be revoked, but, like offer itself, revocation should be made known to the other party to the contract. Also revocation should occur before the original offer is accepted—else it is too late. For *acceptance fixes the offer and the contract.* It should be noted, however, that the mode of acceptance depends wholly on the offerer, he may require any condition in the acceptance that he likes, and unless that condition is fulfilled the offer is not supposed to be validly accepted. An interesting point in connection with revocation is

that whereas an offer may be revoked, acceptance cannot, and for the obvious reason that acceptance closes and seals the contract.

Again, offer can cease by *lapse of time*, i.e. if acceptance is not signified within a reasonable time the offer lapses unless, indeed, the offerer still wishes to keep it open.

Finally, offer ceases by *rejection*, provided again that it is not kept open by the offerer.

(b) *The communication of acceptance.*

Should acceptance be brought to the knowledge of the offerer? Acceptance must, like offer, be communicated, *i.e.* manifested by some external act, but once such act has taken place, is the contract then closed, or does it remain open until this act of acceptance is actually brought to the knowledge of the offerer? On this point two opinions prevail; * but we believe that the negative opinion has most reason on its side. The chief argument will probably already have occurred to the reader; if the contract is suspended until acceptance is made known to the offerer, there is no reason in the world why it should not again be suspended until the fact that the offerer has been apprised of the acceptance has in turn been brought to the knowledge of the acceptor. And thus the contract could never be closed.

In English law, certainly, which in matters of justice may generally be regarded as reflecting the requirements of natural law, acceptance need not be brought to the knowledge of the offerer. "There is," writes Anson,† "this marked difference between communication of offer and communication of acceptance; that whereas an offer is not held to be communicated until it is brought to the knowledge of the offeree, acceptance may be held to be communicated though it has not come to the knowledge of the offerer; and under such circumstances a contract is made."

* It is maintained by some that at least in the case of bilateral contracts (see later, p. 309) such knowledge is required.

† "Law of Contract," p. 28.

THE QUALITIES OF CONSENT

Consent must be free, it must be *internally* given, and it must be *externally* manifested by the parties.

The second and third of these qualities are easily understood. Contract is a human act and, therefore, consent must be *internal*. Mere words spoken without consciousness or internal consent would not be a human act and could not give rise to contract. On the other hand, since contract implies communication between two persons, and since communication can only be by means of *external* acts, the internal act of consent must always be manifested in some way by an external act. But important and difficult questions arise in regard to the first of the three qualities of consent mentioned, viz. the freedom of consent. Of this quality we must speak at greater length than of the other two.

The freedom of consent is vitiated, first, by ignorance or error; secondly, by fear or duress. A man cannot be said to consent freely to something which he does not know. And a man cannot be said to give free consent where consent is wrung out of him by fear. We shall treat, therefore, first, of error as vitiating contract, secondly, of fear.

ERROR

The natural rule as to the effect of error or mistake on contracts is—no consent no contract, and, therefore, it is only in so far as error excludes consent that it vitiates contract. But consent is of two kinds—explicit and implied; and since either is sufficient for a valid contract, it follows that ignorance or mistake affects contract only when it excludes both kinds of consent. Now everyone makes mistakes about or is ignorant of the qualities of an object in some points. In every object there are very many points which nobody understands. But there is always a core or substance in the object which a man stipulates for and concerning which

there should be no mistake. As to other points, he takes a lot for granted and takes his chance of the rest, and gives an implied consent to the reality whatever it is. Mistake, therefore, vitiates contract only in so far as it affects this central core, for this is all that the person stipulates for in the making of the contract. In the following principles we mark off the points or characteristics in regard to which there should be no mistake if the contract is to be binding.

General principles as to the effect of error.

I. Error which is substantial, *i.e.* which concerns the substance of the contract, destroys consent and invalidates the contract. Where error concerns the substance of a contract consent may, indeed, be given to something other than the contract, but it is not given to the contract itself.

Error is substantial in the following cases :—

(1) When it concerns the species of the contractual act, *e.g.* a man, thinking that an object is being *sold* to him, finds that it is only lent.

(2) When it concerns the substance of the object, provided that the substance intended identifies the object or defines the thing required, *e.g.* the purchase of a silver ornament instead of a gold. Where the substance does not identify the object which it is intended to purchase, error as regards the substance of the object does not invalidate the contract.

(3) When it concerns a quality only, which quality, nevertheless, is primarily intended, and, as in the last case, identifies the object which one intends to purchase. The quality in this case is said *redundare in substantiam* and error concerning it has the same effect as error concerning the substance of the object. An obvious example is the case of one who asks *expressly* for an " old master " and receives a modern painting. Similarly, where it is made clear at the time of purchase that a thing is intended for a certain end, then unless what is bought is *reasonably* suitable for this end the contract is invalid. In this case it is the end that identifies the object which one means to buy.

(4) When something is made a *conditio sine qua non* of the contract. This, of course, includes the case just mentioned, but it covers other cases also in which the difference of value between what is received and what is contracted for is less enormous than the difference ordinarily obtaining between an "old master" and a modern painting.

(5) When it concerns the *person* of the other party to the contract but only under conditions which will presently be explained. Sometimes the person, concerning whom the other party is ignorant, is himself not only one of the contracting parties but is also the *object* of the contract. In that case evidently the contract is invalid just as in the second case mentioned above. If a man, for instance, goes through a contract of marriage with one woman thinking he is marrying another, the contract is null and void. But this is not the kind of case which we are now considering. The kind of error now under consideration is error concerning the other party to the contract, as such, and, as we have already said, such error invalidates the contract, but in one case and under one condition only, namely, it invalidates the contract where the primary intention of one of the parties is not merely to make a certain contract, *e.g.* to make a certain purchase, but to do business with, or to make a purchase *from a particular party*. If, for instance, I made it clear to the seller that the sole reason why I have come to make a purchase is to help him in his difficulties, whereas, as a matter of fact, it turns out that I have entirely mistaken the person, my contract is invalid. An offer which is primarily and manifestly meant for one person cannot be accepted by another. But mere error concerning the identity of the person from whom I make a purchase, without the other condition mentioned, does not invalidate the purchase.

II. Error about qualities which are immaterial or slight does not invalidate the contract, or affect it in any way.

III. Error about qualities which, though not primary in the sense just explained, are yet so important as to *cause the contract* (dans causam contractui), *i.e.* which are so important that had the truth been known the contract would not have been made, affects contracts in certain important particulars. Gratuitous contracts (that

is, contracts in which all the utility is on one side, like promise and gift) are invalidated by error of the kind. It would be unreasonable to keep a man to his promise who discovers the great value of the thing promised only after the promise is made. It is different with onerous contracts, *i.e.* contracts in which something is conferred on both sides as in the case of "buying and selling." Here error of the kind described does not invalidate the contract in natural law. An object purchased for ten pounds may turn out afterwards to have been worth a hundred even at the time of purchase; but since the lower mistaken value was not made a condition of the contract, and was not meant to identify the object, the contract is valid in natural law.

In connection with contracts of the kind mentioned under the third heading, we have now to raise a very special question of natural justice which also is of importance in civil law. For mistake is sometimes due not to a purchaser's own want of knowledge or to carelessness, but to misrepresentation * on the part of the seller of an article. And the question arises whether such misrepresentation affects the contract in any way.

Now we have already seen that the validity of such a contract is not affected. Misrepresentation affects the validity of a contract through the mistake which it creates, and provided it does not induce such a mistake as would invalidate the contract, the agreement stands in spite of the misrepresentation, and, as we have seen, mistake about the qualities here being discussed does not invalidate the contract.

But though misrepresentation does not invalidate a contract it has another effect of very great importance, viz. the wrong which is done to the mistaken party. And this wrong sets up in the person responsible for the misrepresentation a very special duty in natural law. For no man is allowed to benefit by any act of his own,

* whether innocent or fraudulent.

whether voluntary or involuntary, which does or perpetuates injury to another. Those parties, therefore, who through their misrepresentations, whether innocent or fraudulent, have caused a contract to be made, are bound to release the other party to the contract but they are not released themselves. In other words, the contract is *voidable* at the instance of the party which is misled.* There is, however, a difference between the position of the man whose misrepresentation is innocent and that of the person whose misrepresentation is fraudulent. In both cases there is a duty of releasing the injured party from the contract, but, whereas in the case of innocent misrepresentation a man is bound to restitution only to the extent of any benefit he has himself received and retains, in fraud he is bound to indemnify the injured party, benefit or no benefit, and fully.

FEAR

Fear may be so great as to destroy reason altogether; in that case contracts entered into under fear are null and void. On the other hand, light or frivolous fear is not taken account of in regard to contracts. But † a question of great importance arises in connection with the effect on contract of *grave* fear. Fear does not bar consent, and, therefore, as such it has no effect on con-

* Provided, of course, that the contract is of its nature voidable. Christian marriage, *e.g.* is not a voidable contract.

The civil law in England has now adopted the above most equitable principle of natural law. Before the passing of the Judicature Act, contracts of the kind described in our text were voidable only in case of fraud. Since the passing of this Act even innocent misrepresentation is sufficient to render a contract voidable in the civil courts.

† It is said by many writers that in the case of gratuitous contracts where all the utility is on one side, *e.g.* promise and gift, light fear renders the contract voidable, *i.e.* sets up in the party who inspires the fear an obligation to rescind the contract. If any such effect arises in natural law it is because common sense and our sense of proportion would seem to require that, where all the utility is on one side, the other party has at least a right of freedom even from light fear.

tract in natural law. It does not invalidate the contract. The way fear operates is that it compels a man to consent in violation of his rights; consequently the *person* who inspires *unjust* fear is bound not only to remove the fear but to restore the other party to his full rights, and to make good the damage, if any. This is the reason why fear which does not proceed from a free agent has no effect whatsoever on contract, or why just fear has no effect. In neither case is any one placed under an obligation of reparation.

Again, there is a difference between fear inspired by a third person and fear inspired by one of the parties to the contract. If the fear which is inspired proceeds from a third party, *i.e.* one who is not a party to the contract, and is unjust, its effect in natural law is to set up a claim in the injured party against the wrong-doer, but the contract stands. Where, however, unjust fear is inspired by one of the parties to the contract, its effect is that the wrong-doer is bound to remove the fear, to restore to the other party his original right to dissent, and, therefore, if the other party is willing, to rescind the contract, and finally to repair any foreseen injury that is sustained. This is the effect of grave fear on contract, and this is its effect whether the fear which is inspired by one of the parties is inspired in order to induce the contract or for some other reason. The only difference in these two cases is that the injury foreseen in the former case will probably be much greater, and, therefore, the obligation of reparation will be greater.

(B). The Object of Contract

The object of contract, or the thing which one contracts to do, must fulfil the following conditions: (*a*) it must be possible, physically and morally; (*b*) it must be something existent *in re* or *in spe*, else it might be compared to the impossible; (*c*) something *pretio aestima*

*bile,** a thing or a utility or a service of economic or marketable value, so to speak; only such things are capable of giving rise to an obligation in commutative justice, and such obligation is of the essence of the contract. The mere promise to accompany somebody on a walk would not constitute the contract of promise properly so called; (*d*) something which the contracting party has power to dispose of; † (*e*) something definite —a purely indeterminate contract is no contract; (*f*) and finally, something which is not morally evil and forbidden.

This last condition gives rise to certain problems and discussions, one of which it will be necessary to consider here, however briefly.

Contract to do evil.

A contract to do evil is null and void from its very nature. For wherever there is a true and valid contract, there arises an obligation to do something. Now there can be no obligation to do the thing which is evil, on the contrary, the obligation is to avoid it, and, therefore, the contract to do evil is null and void.

* This is not quite the same thing as "consideration"—a condition which is required for validity in (English) civil law but is not required in natural law. Let us exemplify the difference in the case of "promise." If I promise a horse to a friend and my promise is accepted, that promise is a valid contract in natural law. But before such contract would be sustained in English law, and before any action at law could become possible on account of its non-fulfilment another condition should be present, the condition, viz. of "consideration," *i.e.* some benefit to the person making the promise, or some loss, trouble, inconvenience to, or charge imposed upon the promisee (by virtue of the non-fulfilment of the promise) should be proved.

That "consideration" is not quite the same thing as the necessity of value in the object of the contract is also clear from the fact that whereas the latter is a condition of all contracts, "consideration" even in civil law is not a necessary condition of *contracts under seal*, but of simple contracts only.

† His possession of the object may be either present or prospective. English law permits the selling of shares, goods, etc., which one does not *actually* own, on the chance of being able to deliver. Roman law would not recognise such contracts.

But the problem arises—supposing that in spite of the evil nature of the object the contract is fulfilled by one side, is the other party bound to fulfil his part of the contract? A promises to give B a sum of money if he kills C. B kills C. Is A bound to pay? At first sight it would seem as if discussion was impossible on such a problem. How, it will be asked, could such an obligation arise, since the contract was null and void from the beginning? A little consideration, however, will show that A in the case is really under obligation (we speak of the law of nature only—positive law might invalidate the contract wholly) to pay B the stipulated sum. An offer can be accepted in either of two ways—either by a promise or by an act. If B accepts A's offer by a promise to kill C, then, since this promise is a promise to do evil, it is invalid, and so the contract is null and void. But if B accepts A's offer by an act, *i.e.* by killing C, then since this act, though illicit, is valid, *the act of killing being a complete act and, therefore, as valid as an act can be,* it completes the contract, and consequently A is bound to keep his promise. The reader may ask—was not A's promise also invalid since it concerned an evil thing? Unfortunately, however, A's promise was not invalid. A is complete master of his own money * and can validly dispossess himself of it on any condition, good or bad, or without any condition at all.

Since, therefore, A's offer is valid, and since we are to suppose it as lasting up to the killing of C, and since this latter act constitutes a valid acceptance, the contract is to be regarded as complete, and, therefore, A's obligation stands in natural law.†

* Obviously if A offered to kill D on condition that B killed C, such an offer would be wholly invalid and could never become part of a valid contract.

† Other solutions of this problem have also been attempted; we believe, however, that that given in the text is the simplest and most convincing of all.

We may be allowed to point out here that the object of a contract may be forbidden not only by natural but also by positive law, in-

(C) The Contracting Parties

By natural law the contracting parties should have the full use of reason at least at the time the contract is made. Infants and lunatics cannot make a valid contract.

Others are debarred by positive law from the right to make a valid contract, not in all, but in certain matters; for instance, minors, wives, aliens. Wives, *e.g.* except in the case of their own property, are debarred from making contracts in a number of important matters where the consent of the husband cannot be legitimately presumed. In regard, however, to ordinary household matters it is presumed that a wife's contracts are made on the responsibility of her husband; and, therefore, unless the husband has actually forbidden her to pledge his credit, such contracts hold good at law. The contractual capacity or incapacity of any special class of people depends on the disposition of the civil law in each country.

The Different Kinds of Contract

(1) Distinguished according to the *end immediately* aimed at, contracts are divided into *gratuitous* and *onerous*, according as the contract aims at conferring a *utility* on one side only or on the two. "Promise" is a gratuitous contract; "buying and selling" is onerous.

(2) Distinguished according to their *effects*, contracts are either *unilateral* or *bilateral*, according as they give rise to an *obligation* in justice in one of the parties only

cluding, of course, State law, and in either case the contract to do such forbidden act is null and void. The State has a full right to make any object illegal and unsuitable for contract, provided, of course, that it does not violate ordinary justice in so doing. We wish, however, to point out that the State often discountenances contracts without actually making them illegal. It even voids some contracts which yet are not illegal. For the difference in the civil effects of voiding a contract and making it illegal see Anson, "Law of Contract," p. 252.

or in both. Thus "sale" or "buying and selling" is a bilateral contract. Promise is unilateral.

(3) Distinguished according to the *law* by which they bind, they are divided into contracts of *natural* and contracts of *civil* obligation.

(4) Distinguished according to the form of the contract, they are divided into the following four classes:—

(*a*) *consensual* and *real*, according as they are completed by the mere consent of the parties or require something to be done, *e.g.* something to change hands before the contract is complete. Thus promise is a consensual contract, loan, a real contract. What contracts are consensual and what real depends largely upon positive law. The natural law for instance does not decide whether "buying and selling" is complete before or only after the goods have passed.

(*b*) *simple* and *solemn*; simple contracts are those that subsist by reason simply of the agreement, and are in no need of special forms or solemnities of any kind. Solemn contracts are those that require special formalities over and above the agreement of the parties.*

(*c*) *express* and *tacit* or explicit and implicit, according as the parties signify their consent formally in words or writing, or simply take upon themselves some office

* In the civil law solemn contracts include "contracts of record" (*i.e.* obligations proceeding from some Court of Record, such as a recognizance, that is, an acknowledgment of a former debt made before a judge or other authorised officer, and enrolled in a Court of Record) and "specialities" or "contracts under seal" or "deeds.' Not only are "deeds" signed but they are characterised by the fact that they are also "sealed." "Contracts under seal" are spoken of as formal contracts *par excellence*, not so much on account of their solemnity, as from the fact that they bind by their mere *form*. The expression is technical. It means that whereas a simple contract binds in civil law only where there is "consideration" of some kind (for instance, in the case of *promise*, where the promisee in respect of the promise does or loses or suffers something or promises to do so) a "contract under seal" binds by its mere form and without the presence of "consideration." Needless to say, such highly technical matters can be dealt with by us only in the most general way. Our business is with the natural not with positive or civil law. Very simple and intelligible accounts of these things can be seen either in Anson's "Law of Contract" or in Indermaur's "Principles of the Common Law."

carrying with it the undertaking that something shall be done ;

(*d*) *absolute* and *conditional*. These terms explain themselves, but some explanation must be offered of the efficacy of conditions as attached to contracts. A condition concerning the present or the past, exercises no suspensory effect upon the contract. If the condition is fulfilled, the contract is valid from the beginning ; if it is not, the contract is invalid. Conditions concerning the uncertain future suspend the contract.* Conditions regarding what is certain in the future do not affect the substance of the contract itself ; indeed, they can hardly be spoken of as conditions at all. Their sole efficacy is to defer the *fulfilling* of the contract, not the contract itself, to a particular day. They amount to an agreement that the effects of the contract will begin on that day.

All this, however, supposes that the conditions attached to contracts are *possible* (*i.e.* that the *act* is possible) † and allowed by *moral law*. Any contract made under a condition which is either impossible or evil is null and void in natural law and conscience, provided, that is, that the attached condition is really a condition and not the mere expression of some additional obligation undertaken with the contract.‡

The civil law makes certain special provisions with regard to conditions attached to contracts, which provisions cannot be examined here. Some contracts, like marriage, it will not allow to be hampered by immoral conditions in the sense that whether such

* We speak here of conditions proper, *e.g.* the purchase of a horse if it passes the veterinary surgeon. What are known in English law as resolutory conditions, *e.g.* a purchase liable to become null after a week's trial, are conditions of the permanence of a contract rather than of its validity. In these cases the contract stands until it is declared null.

† Possibility on the side of the *party* is not looked to if the *act* is possible, *e.g.* if a man has no money to buy material ; that is no excuse.

‡ Such additional obligation put in the form of a condition is spoken of as a " mode " of the contract.

conditions are affixed to the contract or not, the contract will be upheld at law just as if the conditions had not been made.

(5) Distinguished * according as they have a special character entitling them to a *special name*, or are general in character on account of which they are not called by a special name, contracts are divided into *nominate* and *innominate*. Those contracts which are mentioned and described in the list given in the following chapter are nominate. The innominate contracts are all included under the four general titles—*do ut des, do ut facias, facio ut des, facio ut facias.*

* This distinction is Roman, not English.

CHAPTER X

SOME PARTICULAR CONTRACTS DISCUSSED

We now proceed to give a brief exposition of some of the more important kinds of contract.

Promise

Promise is a contract by which a man imposes on himself an obligation in justice of doing or omitting something, gratuitously, and in favour of another person.

If promise is to be a valid contract certain conditions have to be fulfilled: (1) the promiser should intend to assume a genuine obligation in justice of fulfilling his promise;* (2) the promise should be accepted, and both offer and acceptance should be manifested; (3) it should be entirely free. Like other contracts, promise can be invalidated either by error or by fear.

Promise falls through, first, if it is condoned by the other party; secondly, if things alter so that its fulfilment becomes impossible or something quite different from what was originally intended; thirdly, if conditions are attached and these are not fulfilled; fourthly, if through change of circumstances the fulfilment of the promise would become a breach of law.

What if either party dies before the promise is executed but after the contract is made? We must distinguish two cases. If the promisee predeceases the execution of the promise, it lapses if what was promised was meant to be personal to him only; if it was meant in the

* In many cases all that the promiser does is to express his intention of doing something.

interest of him and his family the obligation remains. If, however, it is the promiser who dies, then, if what was promised was something which only the promiser could accomplish, the promise lapses; otherwise the obligation passes to his heirs. It should be remembered, however, that the right which promise sets up in the promisee is a *jus ad rem* only, not a *jus in re*, and, therefore in the case last considered, it would not be right for the promisee violently or clandestinely to seize on the thing promised.

Gift

Gift is a gratuitous transferring of ownership to another. It is made up of three elements, first, the external act of giving; second, the intention to confer ownership; third, acceptance on the side of the donee.

The conditions naturally necessary for validity are, freedom both in giver and receiver, the right to give on the part of the giver, the right to receive on the part of the donee, and finally the fulfilment of such conditions as are required by the civil law for valid transfer.

The various stages representing the order in which ownership passes from one person to another in "gift" are as follows: ownership of the donor, act of giving on the part of the donor, acquisition of ownership by the donee, loss of ownership in the donor. These two last stages occur at the same moment of time so that there are never two simultaneous owners; but the third stages precedes the fourth in the logical order, *i.e.* the order of dependence. The first effect of the act of giving is the setting up of ownership in the donee, because that, and not the loss of ownership in himself, is the primary purpose of the donor. But since two persons cannot be full owners at one and the same time there follows, as a necessary consequence of the setting up of full ownership in the donee, loss of the same in the donor.

"Buying and Selling"

The contract of "buying and selling" is a bilateral onerous contract whereby two persons agree to interchange an article or commodity for a certain price.

In all ordinary cases this contract is effected by ordinary external agreement between the parties, that is, by the inner consent of each, and expression of that consent by each to the other. But in some cases the civil law requires certain additional solemnities, and these solemnities may be necessary even for the validity of the contract.

The consent once given, each party acquires a right (jus ad rem) to the fulfilment of the contract; but the actual moment at which ownership (jus in re) passes from one to the other depends largely upon the provisions of the civil law.

Obligations of the seller.

(1) In natural law the object should belong to the seller. Speaking generally, a stolen object could not be validly sold whilst the real owner is alive. But the civil law is empowered to make its own special provisions in regard to property, and it has introduced modifications in respect even of this requirement of natural law. Thus, with certain exceptions, a man purchasing goods in open market in good faith acquires in England a good right even from a thief.

(2) The seller should deliver the article that is bought, or at least an article morally identical with it.

(3) The civil law sometimes imposes obligations on a seller in regard to the revealing of defects in the article sold. In natural justice, however, a seller's obligations in this respect are very limited. A seller is bound in justice, in the first place, not to charge too high a price. He must fully allow, therefore, in his charges for all defects. Secondly, he is bound to see that the contract under which he takes another's money is a valid one, and so he must see to it that no invalidating

mistake* creeps in. But he is not in natural justice bound to go further, and he is not bound to assist the buyer to make a good bargain.

The just price.

The price of a thing is its value expressed in terms of money. The just price will be the true money value of the thing. Now value is the capacity possessed by goods to satisfy human needs or desires. In exchange this value is determined by the competing needs of buyer and seller. What this means can be most easily understood from the method of exchange called barter. In barter a certain amount of one commodity, say wine, is given for a certain quantity of another commodity, *e.g.* wheat, because it is supposed that the needs satisfied on one side and the other are equal. Now it is only amongst very simple and undeveloped peoples that barter is used as the general system of exchange. The inconveniences attaching to it are many and so obvious that they do not need to be enumerated here. In all developed countries there is adopted a special medium of exchange called money which is used to purchase articles and which can afterwards be given in exchange for other classes of commodity whenever it is convenient to the holder of money to do so. But the two kinds of exchange, barter and money-purchases, are not fundamentally different, and the principle governing the determination of true value is the same in both cases. The just price of an article will be that price which is capable of purchasing other commodities possessed of the same capacity for satisfying needs that is possessed by the original article sold.

From all this it is evident that the just *natural* price of any commodity will be the *market price,* and that market price should ordinarily be regarded as knocking out all others. For, first, it would be very difficult to

* These invalidating mistakes have already been enumerated, p. 302. We should add that in justice he is bound to see that there is nothing in the object sold dangerous to the buyer.

determine price by a direct examination of needs in particular cases. The needs of individuals are variable, and besides they are very difficult to analyse and estimate. Secondly, even an indirect estimate of needs based on what people are willing to pay or accept for commodities is unreliable. A starving man will give a hundred pounds for a loaf of bread. Yet who will maintain that there is equality in the exchange. A hundred pounds will purchase not one but a thousand loaves and therefore is capable of satisfying a thousand times the amount of needs which in the contract mentioned it is regarded as satisfying. In the public market, on the other hand, where buyers and sellers *freely* compete with one another, the price given and accepted may generally be regarded as expressing a true equation of human needs and utilities.

We must admit, however, that sometimes the public markets are not free, either because necessary commodities have become very rare or because of combinations amongst sellers to keep up prices or for some other reason. It often in such cases, and in any kind of cases appertaining to the general interest, becomes the duty of the government to regulate the price of commodities, which price is then spoken of as the *legal* price. In all such cases what the government should aim at is, by a previous consideration of the cost of production and the value of money in terms of what it can purchase, to equate as nearly as possible the needs and utilities on either side. Once fixed by the government this legal price is then to be regarded as binding on the parties, except indeed in certain very special circumstances, for instance, where the order of the government is universally disregarded, where it is manifestly unjust, or where the commodity turns out to be of far greater or far less value than that contemplated by the government.

Returning now to the question of the natural just price there should be no difficulty from what has been said in determining its measure or standard. It can be

nothing else than the common estimate of the buying and selling community. For our present purpose it matters not at all how this public estimate comes to be formed. It depends on a great variety of causes—supply, cost of production, risk, the scarcity or plentifulness of money, the varying desires and fashions of buyers, and the demand in which these desires eventuate. All these and other innumerable elements combine to produce a particular value-resultant in things, which value-resultant expresses itself in the average price paid, *i.e.* in the market price of the article. But whatever be the factors that combine to determine the value-estimate which the public sets upon an article, our present point is that this common value-estimate is the test of the objective value of anything and of the just price.

Two considerations suggest themselves in connection with the public estimate as the standard and measure of price: (*a*) first, that the public by whose estimate the prices of things are determined is a very *varying public*, i.e. it varies in extent; (*b*) secondly, that the price determined by their estimate is for the most part *extremely elastic*. (*a*) Where things are of wide and common use the opinion of *the public at large* will determine the price. The price of rare articles will be determined by the *narrower community that deals in such articles*. In the case of very precious things the community by which price is judged may narrow itself down to that of a single buyer and seller, whose agreed price, whatever it may be, will be the measure of value, and will be just.* The community, whatever may be its dimensions, by which price is determined does not, of course, meet and declare before sale takes place what the price is to be. To a large extent prices and the common estimate are determined *automatically* by the conditions of the market. They are the prices at which

* This may easily occur in regard to the sale of things that do not come into the open market, *e.g.* precious stones, rare manuscripts; or in regard to things that have been withdrawn from the open market, like old clothes.

things actually sell. But these prices will always reflect in a rough and ready manner the judgment of the buying public and the true inner value of the commodity.

(*b*) We have said that the limits of market prices are to some extent elastic. They are elastic because the conditions of the market are variable, and because the wants of the judging public alter. Still, limits do finally come to be assigned within which the just price is supposed to reside. There will be a maximum and a minimum price, and between these extremes there will be an average or normal price, and in general, justice will be satisfied with any price that falls between the higher and the lower limit. Except for certain extrinsic reasons a seller could not legitimately demand a price beyond the highest limit, and it would be wrong for a buyer to play upon a seller's needs by offering him less than the lowest customary price. These extrinsic reasons just referred to, which, however, become operative only in exceptional circumstances, are chiefly two—the possibility of loss to buyer or seller, and the prospect of payment being long deferred.

The question arises, may a seller exceed the range of the market prices on account of some purely subjective or personal value which an article possesses for himself (for instance, the associations which it recalls), or on account of the special value which the possession of a particular article will bring to a particular buyer, a value which it has not for other people? On both questions the opinions of moralists are divided, but we have no difficulty in accepting the solution given by St. Thomas Aquinas. A seller, he maintains, must not exact a special charge for the special pleasure which an article affords to the buyer, or the special value it possesses for the buyer, and which it does not possess in itself or for other people. On the other hand, it is open to him to make a special charge for the special value which the article has for himself. What now is the reason of

this difference in the rights of the seller? It is the following: a seller has a right in fixing the price of the article to take account of what he himself suffers through the loss of the article, and also of the benefit which *through means of the article he himself confers on the buyer.* Now on the first account, a seller can make a charge for the special value an article has for himself. Not so with the special value it has for the buyer. For, on the one hand, this special value does not increase the loss sustained by the seller, and, on the other hand, the special pleasure experienced by the buyer *is not conferred by the seller, it is not caused by the article which is sold,* i.e. by the inherent capacity of the article for satisfying human wants—if it were it would be experienced by all receiving the article. It is caused by and arises exclusively out of, the condition of the buyer (*utilitas quae alteri accrescit non est ex vendente sed ex conditione ementis* *). And, therefore, in making a special charge for the pleasure experienced by the buyer, a seller would be selling that which does not belong to, and is not conferred by, himself (*nullus autem debet vendere alteri quod non est suum*). He cannot, therefore, charge for the special value which an article has for any particular buyer.

ON AUCTION SALES

Auction is a sale in which articles are offered for purchase to many buyers in competition, the condition of the sale being that the highest bidder becomes the purchaser.

The auction price of an article is not the same as the ordinary buying and selling price, which latter price really represents the value of the article. The auction price may fall far below the *infimum pretium* or rise far beyond the *summum.* The just auction price is determined by the highest bid, whatever that bid may be.

* "S. Theol." II. II., LXXVII. 1.

In all justice there is an element of equality. In the ordinary contract of "buying and selling," this element of equality is provided in the equality of the price paid with the intrinsic value of the article. In the case of auction sales the element of equality is supplied in the equal chances afforded to seller and buyer, of profit or of loss. On the side of each bidder there is the chance of his succeeding in knocking out all other bidders. In favour of the seller there is the equal chance of each bidder being knocked out by the rest.

Obligations of the seller, i.e. *the owner.*

Persons attending an auction sale are supposed to have their eyes open and to understand the tacit conventions belonging to such sales. These conventions are many, and it is consequently very difficult to say what is allowed and disallowed in an auction sale by natural law. Where a particular condition is known to, and accepted by, both parties to a contract no injustice is done to either party.

Still there are certain rules that would seem to hold good in natural law *granted the absence of all conventions to the contrary.*

(1) The article sold should go to the highest bidder. A reserve price may, of course, be put on the article, but, allowing for this, the highest bidder should become the owner.

(2) It would seem to be opposed to the nature of this contract, if we consider natural law alone, for the seller, *i.e.* the owner, to bid either directly or indirectly; for the same individual cannot be both seller and buyer, and the express understanding is that the highest *bidder* is to be the successful purchaser. But, there is one exception which is hardly an exception, the case, viz. of compulsory sale. In this case it is hardly right to speak of the owner as a seller, rather his goods are being sold against his will, and it certainly is open to any

owner to try to keep by purchase an article which he does not wish to sell. However, even in the case of a voluntary sale, *custom* would seem to allow of the seller * buying back the things put up for auction and, as we said, the laws of auction are largely modified by these customs.

(3) But it seems to us that there can be no doubt about the question whether it is lawful for the auctioneer or seller to make use of *fictitious* bidders, for purposes of sending up the prices. Such bidders will not be required to keep the article should their bid prove to be the highest; neither do they aim at securing the article for another, but only at putting up prices; and, therefore, they are not legitimate bidders; but the understanding is, as we have already said, that the sale is amongst bidders only, and that the highest legitimate bidder becomes the owner.

Obligations of bidders.

Bidders also are subject to certain obligations. They may not do anything to hinder freedom of competition by forcibly † or fraudulently preventing others from bidding. An auction market is essentially an open and a free market. If the auction is not open to all and free, there is no equality between the seller's chances and those of the buyer, the seller being in every case at an obvious disadvantage.

The question, however, arises—when does the auction market cease to be free and open, and when, therefore, is injustice done to the seller? We must distinguish different cases.

* Either personally or through representatives. There is a great difference between these representatives and what in the next paragraph is spoken of as the "fictitious bidder." The representative of the owner, if allowed to bid, is supposed to aim genuinely at securing the article for the owner. Fictitious bidders are appointed merely to put up prices.

† It is all the same whether the force used is physical or moral.

(1) Merely to ask a buyer not to bid does not constitute an injustice to the owner. For the owner or seller has no right to the presence or the bid of any particular person but only that it be open to each one to bid if he likes. Moreover what a seller counts upon in putting up goods for auction, what gives him his hold over the buying public, and his equal chance of profit with the bidders, is to be found in the need of buyers, and in the fact that he who fails to be the highest bidder loses by his failure—loses, that is, by not obtaining the article of which he is in need. In the present case the man who waives, in favour of a friend, his right to bid, is still a needer and a loser, and thus the seller's hold upon and equality with the public is not diminished in the least. They that prefer friendship (the owner may console himself with the thought) to the chance of an easy bargain must suffer for their ill-judged preference.

(2) What, however, if bidders, instead of merely waiving their chances of a good bargain, agree and conspire together not to bid, for the sake of keeping down the prices, or not to bid beyond a certain price?

This problem is answered differently by different writers. Our own view is as follows: (*a*) as long as the market is still open and free, as long as it is not controlled or constituted by those who conspire to stand aside, the requirements of justice are substantially fulfilled. If two out of forty people conspire that each in turn should stand aside so as to increase the other's chances of an easy purchase, then since the market is still open, and the bids may reach any level, and since in addition, the person who agrees to stand aside is so far a loser just as in the case last considered, it would seem that the essentials of the auction contract are substantially fulfilled.

(*b*) What, however, if those who conspire to keep down prices control or nearly control the market? What if, practically speaking, there are only a few possible buyers, the article to be sold being one of great price?

May these lawfully conspire that one only should bid, or that the other bidders should not go beyond a certain amount? Again we have to make the important distinction already explained. If in this small market four out of the five bidders agree freely and unselfishly to waive their right out of friendship for the fifth, and thus relinquish, with, of course, nothing but loss and suffering to themselves, their chance of a bargain most earnestly desired by each, we cannot see that they have done anything more than use their right to bid or not to bid—a right which is possessed by any member of the buying public. Here again those elements of equality which constitute the justice of the auction contract are preserved—the equal chances of profit and of loss on either side. The seller loses, but the possible buyers lose also * by not obtaining the article or any equivalent.

Quite different, however, is the case in which buyers who control the market agree to stand out and to keep down the price with advantage to themselves, the compact being either that the present winner will stand aside another time in their favour, or that a private re-auctioning of the article will take place amongst the members of the ring, or that the spoils will be divided if the article should be re-sold. In this case a grave injustice is done to the seller. For, in the first place, the market is no longer open and free, each party having bound himself and all the rest, the winner also sharing in the compact, by an onerous bilateral contract to abstain from bidding.† But a free market is essential in the auction contract. Secondly, the seller in this case *must always* be at a disadvantage, the buyers, even those who abstain, *must always* have the advantage,

* All but the winner, who, however, is not the cause of the low price realised. It is those who stand out of the bidding who bring down the price.

† On the other hand where the four members abstained out of friendship for the fifth, they were still quite free to bid, and in particular the winner, by promising and conferring nothing on the others, puts them under no contractual obligation to abstain from bidding. The market, therefore, in this case is fully free.

a condition of things which is very far removed from that equality of opportunity between buyer and seller which is of the very essence of auction sale. Rings, therefore, to keep down auction prices are altogether unlawful where they are large enough to control, or practically to control, the market.

ON MONOPOLIES

Monopoly is the exclusive right or exclusive power of one or a few to sell a particular article.

We distinguish *legal* monopolies from monopolies of *fact*. The former possess the exclusive *right* to sell. This right is bestowed by public authority. To the latter belongs the exclusive *ability* to sell. They have, *in fact*, secured complete control of a particular market, though the *right* still remains with all others to compete if they can.

Legal monopolies are either *public* or *private*, according as the law concedes the monopoly to the State or a part of it on the one hand, or to private persons on the other.

The following moral principles govern the formation of monopolies :—

(1) Public legal monopolies are lawful where there is a grave public reason for their formation, *e.g.* as a source of public revenue.* Such public monopolies may lawfully sell goods at a price *somewhat* above the *summum pretium*, any excess being regarded as a tax which the State needs for its support.

(2) Private legal monopolies are also lawful if they are granted for a just cause, *i.e.* on the ground of public necessity. Thus, patented inventions are legal monopolies. Without them there would be no sufficient incentive to invention. So, also, firms are sometimes granted monopolies (generally for a definite time) in connection with certain expensive and risky enterprises of public importance, which would not be undertaken

* See p. 227.

without the guarantee of success which a monopoly affords. Such firms, however, have no right to sell above the *summum pretium*.

(3) Monopolies of fact are also lawful. It is lawful for one firm to undersell others even where there is risk of those others having to go under and disappear. It is even lawful to undersell them so that they may disappear * and that a monopoly may be established, provided that it is not the intention of the prospective monopolist to sell later above the level of the *summum pretium*. In underselling others one only uses his right, and the same holds true where one undersells to establish a monopoly.

Such is the position of affairs in justice in its strictest sense. A man may undersell others and a man may charge the *summum pretium*. But charity has its obligations as well as justice, and the former are far more stringent and far-reaching than the latter. Underselling with the object of ousting others from a particular trade is forbidden in some cases by charity, viz. where nothing but misery awaits the defeated competitors. And charging the *summum pretium* is also sometimes forbidden, in the case, namely, of necessary things like food and clothing which the public is prevented from purchasing, or can only purchase in insufficient quantities, as long as the higher charges are imposed.

Contracts of Chance †

These are of various kinds: (a) *insurance*, by which a person secures himself against risk, such as the risk of fire, by payment of a stipulated amount to another

* Provided it is not done from any uncharitable motive.

† The contract of bailment ought naturally to be considered before those of chance. We plead as our reason for treating of the latter here the length of our discussion on bailments in general and the two special contracts of bailment, money-lending and the wages contract, with the cognate problem of strikes. At the close of such a long discussion the reader would almost have forgotten that there were still special contracts to be considered.

person who undertakes to bear the risk; (b) *betting*, a contract by which two or more persons lay wagers with regard to the truth or actuality of an uncertain event, * the wager to go to the person who hits upon the truth or on the result that eventually occurs; (c) *lottery*, a contract in which on payment of a certain sum a man is given a right to receive a sum of money or some object of value on the chance occurrence of some event. (d) *gaming*, a contract by which a number of people agree to pay a certain sum to the winner of the game. In some cases a man wins by his own efforts and skill, as in cricket or football; in some cases the game is wholly one of chance as in some card games; in other cases the game is mixed as in the card game of Bridge, where the cards are distributed by chance but the successful playing of them is a matter of skill.

Gaming is lawful if certain conditions are fulfilled, *e.g.* provided that a man wagers only what belongs to himself, that cheating is excluded, that the game is neither illicit in itself nor prohibited by law, that playing is free on the part of all, and that the stakes are not so high that one's family or creditors must suffer in case of loss. It is claimed by some that the chances should be fairly equal all round, so that if one was an exceedingly bad player and the others were experts, the game would be unlawful. We cannot, however, accept this judgment. Superior skill, no matter how great, does not make one's play unjust. The opponents know the game and they cannot count on anyone being an inferior player. But, as we have already said, a bad player (and even a good player) should not be constrained against his will to play.†

* Where one party is certain, the bet is invalid, unless he makes it clear to the other person that he is certain. In that case the winner receives the wager not as a bet, but as a free gift.

† Through want of space we are compelled to omit all mention of what are known as the subsidiary contracts, those, viz. which are dependent on and tributary to the others, *e.g. pawn*, by which something is given in pledge for something borrowed.

Bailments

Bailments are certain contracts by which goods are placed in the hands of one who is not their owner, for a special purpose. These purposes are chiefly three—to be kept, to be worked up or carried, to be used. In the first two classes of contract the goods are left with another in the interest of the owner; in the third they are left in the interest of the person receiving the goods. Examples are—of goods to be kept, deposit of goods; of goods to be worked up, things left to be mended or cleaned; of goods to be used, the lending of a machine.

In none of these cases is ownership of what is placed in the hands of another surrendered. In all it is supposed that what is given over at the present instant remains the property of the original holder.

Of the various contracts included under "bailment" there are only two (both belonging to the third class of bailments) which can be considered at length in the present work, viz. loan and the wages-contract; and of loan only one species can be considered, viz. the loan of money. These two special contracts we select for special consideration not because they are more important or sacred than the others, but because of the special prominence they have assumed under modern social conditions, and because of the many difficult questions of natural law and right to which they give rise.

The Loan of Money

Loan may occur in connection with two kinds of things: first, things that are consumed in their use; second, things that are not. Examples of the former are fruit, bread, wine; an example of the second is machinery of any kind. In the technical sense, however, a thing is said to be consumed in its use not only if it is necessarily destroyed by use, but also if the use of it

necessarily entails its being lost to the owner, even though in its use it is not destroyed.

Now there is this great difference between the loan of things that are consumed in their use and the loan of a productive thing which is not consumed in its use, like a machine, that the former kind of loan confers no right on the lender other than the right of recovering the equivalent of *the thing lent*—it confers no additional right of recovering something for the use of the thing lent; whilst the latter kind of loan confers not only a right of recovering what is lent but a right to charge something in addition for the use of what is lent. Let us compare the two cases.

A machine has two simultaneous values for its owner. First, there is the value of its use, the profit that arises from its use. A machine, for instance, produces saleable commodities of various kinds. Then since after use the machine is still available, whole and unimpaired, there is also the value of the machine itself as a substance. For the owner the machine has always these two values, and to fail to take account of either of these in computing the total value of the machine to its owner would be to represent the value of the machine as lower than it really is. This doctrine that in productive things like a machine there are two distinct values, making up between them the full economic value of the machine, viz. the value of its use and the value of the machine itself, is briefly expressed by saying that in productive things *it is possible to distinguish between the use and the thing itself*. Suppose now that the owner instead of using the machine himself lends it to another to be used, it becomes plain that the lender is depriving himself of the two values which we have distinguished, and that the borrower receives these two values. In justice, therefore, he should pay back these two values to the owner; first, he should return the machine itself, and secondly, he should pay a charge upon its use.

The rights and obligations arising from the loan of

fruits and such things are very different. Fruits, and consumable things generally, have one value only for their owner, viz. the value of their use. Once used their value disappears, for they have themselves perished in their use. Their total value lies in their use. This was their only value for the original owner. This is their only value when lent. This, therefore, is the only value which the borrower should return; and the question arises—what is the extent of this value?

The question what is the value of things that are consumed in their use, may best be answered from an examination of a simple concrete case. What, for instance, is the value attaching to a pound of grapes or a loaf of bread? The man who eats a pound of grapes has had value to the extent of a pound of grapes. The man who eats a loaf has had value to the extent of a loaf. In general terms *the value of anything, the use of which consists in its being consumed, is the value of the thing itself*; it has not, like the machine, two joint values, one arising out of its use, and one the continuing value of the thing itself after use; it has one value only, equal to the thing which is consumed. This, therefore, is the extent of the borrower's obligation in the case of things *primo usu consumptibilia*, viz. to return the equivalent of what has been lent. The lender in the case of loans of this kind (they are known as *mutuum*) has no right, *vi mutui*, in addition to demanding the return of the object lent, to impose any other additional charge. He has no right to look for a profit out of his loan. We say *vi mutui*; for though the contract of *mutuum* itself does not entitle an owner to more than the return of the equivalent of what has been lent, an owner may acquire a right to more on other titles. A man, for instance, has a right to compensate himself for any loss sustained by reason of the loan (*damnum emergens*), for cessation of previous profits (*lucrum cessans*), for risk or danger run (*periculum sortis*), and finally he may demand compensation for failure on the

part of the borrower to pay within the stipulated time (*poena conventionalis*). These, however, are all extrinsic titles. They do not arise out of the nature of the contract itself. Granted that no losses are incurred, nor risk run, the loan of a thing *primo usu consumptibile* confers no title to special profit or to anything more than the return of the equivalent of what has been lent. Any such profit arising out of and based exclusively on the contract itself, and not on some other extrinsic title, is wholly unjustified.

We now come to the special question of the loan of money. Money* is anything that serves as a medium of exchange. Whether money consists of gold or silver or paper or any other material, its one function *as money* is to serve as a means for buying and selling. A purchases goods from B by means of money. With that money B purchases goods from C. As money this is its one and exclusive function, viz. to be a means of exchange.† Now it is evident that a medium of exchange is something, the use of which is to be given away in exchange (*distractio, secundum quod in commutationes expenditur*), ‡ to be given for something received; it is, therefore, something which is necessarily lost to the owner in its use, something which an owner cannot use and at the same time keep, like machines and other productive things; it is, therefore, something which is consumed in its use in the technical sense of this term.§ And since

* "Money is the medium of exchange. Whatever performs this function, does this work, is money. . . There is no other test of money than this."—Walker, "Political Economy," p. 123.

† Writers add that money is also a measure of value. The addition has no bearing on our present discussion.

‡ "S. Theol." II. II., Q. LXXVII. Art. I. It should be remembered that usury was condemned not only by the mediaeval philosophers, but by those of ancient Greece as well. See Grote, "History of Greece," Vol. II. 20.

§ With his usual bold consistency St. Thomas explains that if money were used for any other purpose than as a medium of exchange, any other purpose that would allow of its remaining in the hands of the user even after use, a charge could be made upon its loan. Thus if money were sewn up and sealed in a bag in order to prevent its being spent, and in this condition was lent for any purpose (the same

in the Middle Ages money had normally no other function than to serve as a medium of exchange, to charge interest on money at that period demanding in return for money lent both the original sum and something additional for its use by the borrower, would be attributing to money a double value which it did not then possess.

Now all this reasoning of the Scholsatic writers holds true to-day as well as in the Middle Ages. Money as money, *i.e.* as a mere medium of exchange, is still unproductive, still something, the use of which is its consumption, and, therefore, as money it confers on the owner no right to special profit arising out of its being lent. But money is now, what it was not in the Middle Ages, something more than this. Money now is capital,* it is productive, *for it can be turned into capital* † at any

might be said if money were lent as an ornament) the loan of it would entitle the owner to a special charge. It would not then be a thing consumed in its use, but even after use would still remain in the hands of the user. See "Quaestiones Disputatae," De Malo, Q. XIII. Art. 4, ad 15; also "S. Theol." II. II^{æ}, Q. LXVII. Art. 1. In this exposition of the morals of money-lending, St. Thomas, it will be obvious, makes full and effective provision for possible changes in the normal function of money, such as occurred when money, whilst still retaining its original function of a medium of exchange, became also a species of capital or a source of wealth.

* In the text above interest is regarded on its moral side as *due* to the lender, the ground being the fact that money now is capital. But interest can also be considered on its economic side, as offering an *inducement* to the saving of money. Once a sufficient amount has been saved for all future necessary purposes an owner of money will not effect further savings unless he is induced to do so by an offer of interest. He must be paid, by those who are in need of money-loans, to save. This payment, *i.e.* the interest one receives, might be regarded as compensation for the sacrifice entailed in not spending one's money.

† It may be objected that in the Middle Ages money could be turned into furniture and ornaments and other things that were not consumed in their use. Might not interest, therefore, be charged on money as representing these things?

We answer that no such charge could be made. For furniture and ornaments and such things are *ordinarily* bought *to be kept*; money is convertible into them as things ordinarily to be kept; and as long as a person keeps these things their use is not distinct from the things themselves nor are they a source of profit. No doubt furniture and ornaments could be made a source of profit in one way, *i.e.* by lending them; for, as we have already seen, a charge can be made for the loan of these things. But as kept they are not a source of profit, and normally they were bought to be kept. In this

moment, by the simplest of processes, and at no cost. In the Middle Ages capital was not on the market. At that period the only kind of capital worth talking about was land, and land was not in the market. At that period, therefore, money could not be turned into capital, So easily on the other hand is money turned into capital at present that each is ordinarily spoken of in terms of the other. Although money is not, *in specie*, the same thing as a railway or a mine or a business concern or any of the other kinds of capital, yet he who has money is said to be possessed of capital; and on the other hand a railway or a mine is ordinarily spoken of as stock, *i.e.* it is spoken of in terms of its money-value just as if it consisted of so many sovereigns or pound notes. He, therefore, who at present has money has capital, and consequently when money is lent a charge can be made for the loan of it just as for the loan of any other productive thing.*

The just rate of interest.

The rate of interest is determined by the market, just like the price of any other commodity, and it is always lawful to charge the market price. There will, of course, be a *summum* and an *infimum pretium* for money just as for other commodities, and justice is observed as long as a lender does not exceed the *summum pretium*.

The market rate of interest is formed in the same way as

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they differ radically from machinery. A machine can be kept and yet used as a source of profit. This is the normal and chief function of a machine—to produce and to be a source of profit. Whilst, therefore, money as convertible into a machine is convertible into something which is normally a source of profit to its owner, money as convertible into furniture is convertible into what is not ordinarily a source of profit to its owner. In the first case, therefore, money carries with it a claim to interest; in the second case it does not.

* The theory expounded in the text above on the ground of interest and on the difference between the mediaeval system and our own is fully confirmed in an able discussion on the mediaeval doctrine of interest in W. J. Ashley's "An Introduction to Englisih Economic History and Theory," Vol. I. p. 148. On interest as compensation for the sacrifice involved in saving and as an inducement to save (referred to in our note, p. 332) see T. N Carver, "The Distribution of Wealth," ch. vi.

other prices. It depends chiefly on the profits accruing from the different kinds of capital. Money is lent for the purchase of capital and stands for capital, and its price will naturally vary with the productiveness of capital. The market price takes little account of risks. The value of risks is a thing for the individual lender altogether.

The market rate of money varies just like ordinary prices, and it would be exceedingly difficult to fix on any general limit which could never be exceeded. In a particular country and at a particular time it might reach a very high figure—in others it might stand very low. But the market rate, at whatever level it stands, is the just rate, just as the market price is the just price. It is, of course, possible for the civil powers to fix a rate of interest to be in no case exceeded, and then the price which is settled by government should be regarded as knocking out all others. But the natural determinant of the rate of interest is the market or the quoted price.

THE WAGES-CONTRACT

The wages-contract is a contract by which one man's service or labour is loaned out to another for a definite salary or wage.

The object of this contract is the employee's labour, his energies, or, as a thing of economic value, himself. The employee places himself at the disposal of his employer to be used for the employer's interest, and for this loan of himself and his energies he receives a certain salary or wage.

In its widest sense this contract covers all the fields of human labour, that of skilled and unskilled men, the labour of carpenter, clerk, doctor, and cabinet minister. In all these the labour of the individual is put up for sale or hire. But in its narrower sense this term labour- or wages-contract is used to signify the contract entered into between the master or the capitalist and those of his employees who are in receipt of a daily or weekly wage. It is in this sense that we shall employ the term in our present discussion.

The nature of the wages-contract.

Capitalist and labourer must stand to each other in one or other of two relations. The labourer may work with the capitalist as a partner or he may work for him as a wage-earner. In the first case the labourer would be supposed to supply the necessary labour just as the capitalist supplies the necessary capital, and both would share in the profits according to the relative value of their respective contributions to the work effected by their joint efforts.

But this first system has disadvantages for the labourer that are at once manifest and unavoidable. In a factory employing three thousand hands the share of the profits falling to each labourer (no matter how favourable the terms of the contract) will not make him a rich man in the sense in which the capitalist at present is rich. He can never possess very much money of his own, and never can command credit to any but an insignificant degree; and, therefore, to keep a labourer out of his money for six or twelve months would practically mean leaving him and his family without the necessaries of life during that period. Consequently the labourer must receive his money at regular and brief intervals if he is to be in a position to meet his daily wants. Besides, there is the element of risk. The labourer cannot afford to work for a whole year for a reward which is purely hypothetical. At any time disquieting circumstances may arise or accidents may happen. Fires may destroy, wars may break out, depreciation in the value of a manufactured article may occur, the prices of raw material may rise, defaulters may abscond, debtors may go under, and the consequence may be the total disappearance of the anticipated profits or their serious diminution. In that case a labourer who is a partner will have given his labour for nothing or for very little, and disaster will be the result for himself and his family.

From all this it will be evident that the position of partner in a commercial concern is attended by inconveniences and risks which a rich man may face with some degree of equanimity but which are wholly unsuited to the needs and resources of the average workman. A workman must receive the full reward of his labour at regular and brief intervals, and he must be assured of a standard and definite income whether the profits of the concern to which he is attached go up or down, or even if they disappear altogether. These are the two conditions without which the lives of most workmen would be insupportable, and it is these two conditions that constitute the second of the two systems referred to above—the wages-system, and the wages-contract. A wage-earner is one who hires out his labour to another and receives in return, at regular and brief intervals, a definite and assured amount not dependent on the varying fortunes of the concern by which he is employed.

The relation of workman and capitalist then, under the wages-system is easily understood. The capitalist gets the net profits be they great or be they small. The labourer gets a fixed weekly wage. What is meant by the net profits? They are those profits that remain after all expenses have been paid. These expenses are many. They include the rents of grounds and buildings, the interest on borrowed money, the price of raw materials; and they include also the wages-bill of the workman. All these things have to be counted in and paid before the net profits falling to the capitalist can be computed or appropriated. They are the first charges on the concern, they come before the profits, they are independent of the profits; the profits, on the contrary, depend on them. Herein is much food for thought for the capitalist class. It is the capitalist who takes the risk of a business. But the risk is not without its advantages, for the capitalist gets the profits, too. The bargain is—"to you (the workman) an

assured weekly wage; to me the profits and the risks. If the profits are high they belong to me. You cannot complain of this, because if the profits are low or disappear altogether it is I who am the loser." It is a fair bargain, but its terms must be observed most rigorously, not by the workman only, but by the capitalist as well. The capitalist engages to pay his workmen a fixed and a just wage. He cannot, when the profits begin to decline, reduce his workmen's wage on the ground that the concern is poor and cannot afford to pay the stipulated wage. The capitalist must pay the stipulated wage as long as there is anything wherewith to pay. The capitalist cannot have it both ways. He cannot make his own of the increased profits when profits rise, and put the loss on the labourer when they fall. It must be either one thing or the other—a partnership-contract giving the workman part ownership of the concern and of the net profits, or a wages-contract securing him the full stipulated weekly wage.*

But the obligations of the capitalist do not stop at continuing the stipulated wage even when profits decline. The wage which is paid to the labourer is supposed to be *just*. Opinions vary as to the question what it is that constitutes the just wage. But there can be no difference of opinion as to the capitalist's obligation to pay a just wage. And capitalists themselves fully recognise this obligation. Now a wage that is just and equitable at one period or in one set of circumstances may not be just and equitable at another. The cost of living, for instance, may be greater at one period than at another. If, therefore, it should happen that the wages paid to, and accepted by, workmen ceased for any reason to reach the level of the just wage, for instance, because it was no longer a living wage, it be-

* A combination of these two methods has been recommended. But in so far as the wages system is adopted, all that we have said holds good even in the case of the combined method. Wages are a first charge on the receipts and must be allowed for before profits are computed.

comes the duty of the capitalist to raise the wages of his workmen to the level required by justice, irrespective of whether the profits of the concern are high or low or whether some shareholder capitalists might as a result be left without their dividend. It is not merely the wage of the labourer that constitutes, as we have said, a first charge on an industry, and that requires to be allowed for and paid before the net profits begin to be computed, but the *just* wage of the labourer, for no other wage has a right to be considered as fulfilling the terms of the contract which we are here discussing.

The conclusion to which this discussion leads is as follows: capitalists who deny an increase of wages to their men when such increase in manifestly necessary in order to bring wages up to the just level,* or who deny it until work is struck by the labourers, are guilty of a gross injustice to their men. The strike is a very disastrous thing, disastrous particularly for the labourer; and capitalists, who, rather than raise the men's wages of their own accord, will permit a strike to occur are guilty of a two-fold injustice, first, the injustice of withholding a just wage; and secondly, the injustice of compelling the men to undergo great misery in defence of what is their clear right.

But there is a duty on the other side also. We have seen what the wages-contract is. To the workmen a fixed and a just wage, to the capitalist the varying profits. The workmen, therefore, should not clamour for an increase of wages as soon as the profits rise. They have a right to a share in the risen profits in one case only, the case, viz. in which the increased profits are due to a large extent to increased work put on the workmen. If their hours and the intensity of the work remain the same, any increase occurring in the profits of the concern should be regarded as portion of the

* Of course it is only the "real" wage that counts for the workman, *i.e.* the wage considered from the point of view of its actual purchasing power. The labourer has a right to a just *real* wage.

capitalist's chances. The workman cannot have it both ways any more than the capitalist. He cannot expect the capitalist to shoulder all the losses and then to divide the increased profits with his employees. The essential conditions of the wages-contract hold for one side as well as for the other.

This does not mean that the wages of labour should be regarded as *static*, that they should not advance as the profits of industry increase all over the world, that the workman has not the same right as other people to share in the advancing prosperity of the race at large. Those increases in profits to which we said the workman should not lay claim are temporary increases, or increases occurring in particular firms and due to particular and transient causes. To these, as we said, the capitalist has an exclusive right.* But the workman has a full right to some share in the increasing wealth of the world at large, and in particular to those permanent increases in the profits of industry that are of general occurrence, and that form such a large and important part of what we speak of as the increasing prosperity of the race.

In the first place the workman has a right in *legal* justice to a share in this advancing wealth of the world. The first law of legal justice is that the interests of the parts should be subordinated to the interest of the whole. Capitalists, therefore, have no right so to make use of their position as directors and employers of labour as to prevent advancement in the general welfare whilst enriching themselves. But with a poor and miserable proletariat, a proletariat that must still remain impoverished, and, therefore, backward and ignorant, and wanting in all the refinements of life, whilst the rest of the world increases its wealth and progresses in every department of human activity, it cannot be said that

* Because he runs all the risk. But where the increased profits are permanent and universal, no risk is run by the capitalist, and therefore the rule of the ordinary wages contract (to the capitalist all the chances, to the workman a fixed wage) does not apply.

the welfare of the whole body politic is increased. In any organism the welfare of the whole depends on the welfare not of one but of all the parts. And it is to be remembered that whilst the capitalist class is one part only, and small in comparison with the others, the proletariat constitutes the far greater portion of the human race. Labour, therefore, has a right in legal justice to a share in the world's increasing wealth.

But workmen have a right to share in the general progress of industry and the increasing prosperity of the race not in legal justice only, but in *commutative* justice also ; and for the following reasons :—

(*a*) The workman has a right to a fair living wage. But the living wage is largely determined by the standard of living, and, therefore, as this standard rises, the workman's wage should rise correspondingly. Now, that the workman's standard of living advances as the profits of industry rise, is shown in the following way. In any community the standard of living in one part must to some degree depend on and reflect the standard in the other parts. If one body of workmen eats meat it is a grievance if the others can never touch it. If some dress well it is a misfortune that others have to go in rags. Where all belong to one society the parts must necessarily react on one another and create requirements in one another.

Now, the workman's standard of living is affected by the standard of his environment in two ways: first, the increased expenditure and extravagance of the rich will affect his standard of living in accordance with that general law of interaction in the parts of the social whole of which we have spoken ; secondly, and more particularly, the necessities of the workman will be affected by the heightened standard adopted by certain members of his own body. For, it must be remembered that in the ordinary course of trade, capitalists will always be compelled to compete with one another for the best labour, and as a consequence the more skilled work-

men will be offered a higher wage. This higher wage will raise the standard of living amongst the skilled men, and not only amongst the skilled but amongst workmen generally, even those who from their remote position or from the nature of their work are not in a position to bargain with the capitalist as the skilled men can.

(*b*) The workman has a right to share in the increased prosperity of trade because to some extent he is the cause of this increased prosperity. We shall see later that the value * of labour, though primarily dependent on the intrinsic natural functions of labour, is also to some extent dependent on the products of labour. Now, as industry progresses, the labour of the workman becomes more and more productive; and this increased productiveness is not exclusively due to factors for which only the capitalists are to be given credit, for instance, the improved machines which they supply to their workmen, but to other factors also; it is due, *e.g.* to the greater skill and effectiveness of human labour at each generation, to the higher faculties that the newer industrial methods call into play on the side of the

* Page 349. The value that we speak of here is the value that *ought* to be recognised by capitalists, the value which belongs to the labourer's work by *natural right*. Of this value economists take often little account. For them the value of labour is the value that *is* recognised and accepted, under the law of supply and demand—the law of the " marginal utility " of labour to capitalist and workmen. But to the workman's labour there attaches a value, as we shall later show, that is altogether independent of the chances of supply and demand; and as long as capitalists and economists ignore this *rightful natural* value they do an injustice to the workman. Economists may devise methods for terminating the war of capital and labour but that war will never cease until the *moral* rights of the workmen are fully recognised, *i.e.* until it is recognised that there is another element of value in human labour than that which the capitalist finds it profitable to recognise under the law of supply and demand. For an example of the " supply and demand " theory of the value of labour worked out in its crudest form, see T. N. Carver, *op. cit.* p. 164. Here the demand is represented as regulated by the (marginal) value to the capitalists of the products of labour, whilst the factors regulating supply of labour are said to be " the standard of living " (*i.e.* parents of the labouring class will only bring so many children into the world as can be reared according to the current standards of comfort) and the " painfulness of labour "—truly an inhuman theory of the *value* of *human* labour.

workman—the abilities that are exercised in the management of the newer power-driven appliances being higher than those that suffice for the manipulation of the older and simpler machines; it is due also in some measure to the increased demand of the community at large for the products of industry, and to improved co-ordination in the markets of the world. The increasing wealth of the industrial world, therefore, is not to be regarded as wholly due to capitalist endeavour, and consequently the capitalist has not a right to the whole increase; and though once the wages-contract has been made, the workman should stand to his contract during the specified period, still, in the renewal of the contract, periodical account should be taken of the all-round permanent advance of the profits of industry, and of the part played by the workmen in securing this advance. Of *increases* in the profits of industry, as well as of the general output of industry, the principle holds true that "all production is group production." *

As a class, then, workmen, whilst abiding by the laws essential to the wages-contract, should share in the world's increasing prosperity and wealth. *But a mere temporary increase, even though lasting over some years, in the profits of a particular concern, does not of itself justify workmen in clamouring for a higher wage, once a just wage is agreed upon by employer and employee* †

* See also ch. vi. p. 196, note.

† A question of some importance which labour leaders sometimes put to labour audiences with great effect is the following: why should the capitalist be regarded as master and the labourer as subject? If one pays out wages the other pays out labour. Are they not, therefore, equal, just as buyer and seller are equal? And if equal why should one be "master" and the other "employee"? "You say," said Mr. James Larkin at a certain labour enquiry held at Dublin Castle, "that you employ the labourer. I say the labourer employs you."

The answer to this question is very simple. In the wages-contract there is equality between the two parties in the sense that each gives value for what he gets. But the parties are not equal as regards the right of direction and control. The wages-contract is a contract by which the labourer loans out his energies to the capitalist and receives for this loan a weekly wage. Under this contract, therefore, the energies of the workman are temporarily placed at the disposal

These temporary increases in profit may at any time be replaced by losses, and since the losses have to be borne by the capitalist alone, he should have all the advantage of the increased profits.

THE MINIMUM JUST WAGE

It is important that the exact meaning of this question should be explained. First, we are about to deal, not exactly with the question of the just wage, which varies according to the character of the different employments, but with the question of the *minimum* just wage, the least wage that can in justice be offered to any workman. Secondly, we are dealing here with the case of the regular employee, the man who gives up his full labour day to his employer, and works regularly for the same employer. As a matter of fact our doctrine of the minimum wage will be found to hold true *mutatis mutandis* of the case of the casual as well as of that of the regular employee. But to take account here of the two sets of cases would complicate the problem of wages exceedingly. Thirdly, our present discussion relates to adult and able-bodied men only. The reader can himself determine how far the doctrine of the just wage to be expounded here applies to the case of children, women, old men, and those incapable of putting in the full labour day. Fourthly, our discussion relates to the question, not how much the workman ought to be paid, whether, *e.g.* it should be fifteen shillings or a pound, but what is

of the capitalist, and the capitalist has, consequently, a right of mastership over, *i.e.* a right to use, direct, and control these energies. By virtue of the wages-contract, therefore, the capitalist is the master and the labourer subject. The wages-contract does, however, give to the labourer a right of control over something, but not over his employer. It gives him a right of control over the wage which he receives for his work. Of his wage he is given the full right of ownership and use, just as the capitalist gets a right of control over the energies or labour of the man he employs. Herein, no doubt, there is equality between the two ; nevertheless, as we have said, through the wages-contract itself mastership lies with the employer, his mastership being nothing else than his right to direct the labour of his employee.

the principle by which the minimum just wage should in general be determined.

These preliminaries being explained, we now go on to the consideration of this important problem.

Various theories have been put forward at different times as to the principle on which wages should be determined, for instance, the *"supply and demand" theory* that wages should be regulated like the price of any ordinary commodity, *i.e.* by the laws of supply and demand; or *the "value of the products" theory* that the wages of labour should correspond with the value of the products of labour. Both theories find favour naturally with capitalists, since on both theories the advantage obviously rests or can be made to rest with the capitalist.

Take first the theory of supply and demand. If wages are to be regulated on this principle, then since the supply of labour nearly always exceeds the demand, the capitalist will always be justified in paying a very low wage, or even a wage scarcely rising above the bare subsistence level. Men will always be found to work for a bare subsistence wage when the only alternative is that of unemployment and starvation.

Then there is the "value of the products" * theory. This theory the masters turn to their own advantage because they apply it only in cases in which the advantage must be to themselves. They apply it when the value of the products decreases, and, therefore, in such a way as to lower the wages of workmen. They do not apply it when the value of the products rises. If they did the wages of the workmen should go up with every, even temporary, increase in the profits. Besides, they never give the full value of the products to the workmen, and they reserve to themselves the right to determine how much of the value of the pro-

* As was shown in a note, p. 187, these two theories are not quite distinct and independent. It is the (marginal) value of the products to the capitalist that regulates the demand for labour.

ducts should go to the workmen and how much is to be reserved as legitimate capitalist profit. We are not complaining that capitalists reserve some of the profits for themselves. They have a perfect right to do so. Our point is that the "value of the products" theory is not legitimately worked out by the capitalists, that as applied by them it is always to the grave disadvantage of the workman.

But these theories are objectionable not only because under them the advantage is nearly always on the one side, that, viz. of the employer, but for the much more important reason that they are intrinsically defective and unsound. And they are intrinsically unsound because they fail to take account of, or rather positively contravene, the central and essential element in the wages-contract. What that element is will be seen in the following line of reasoning in which will be elucidated the true principle and theory of the minimum just wage.

The central and essential element in the wages-contract by which this contract is distinguished from all other contracts, including even the other contracts of loan, is the fact that its *object* is not an ordinary commodity like land or an ornament or a machine, but a human person. Under the wages-contract a man puts himself, *i.e.* his faculties and energies, at the disposal of, or loans them out to an employer in return for a certain wage: and the problem of determining the just wage is the problem of determining the value of the human person, or of his faculties and energies. Now, as we shall presently see, the faculties and energies of the human person have a certain intrinsic and natural value independently altogether of their value for other people which is purely extrinsic, and, therefore, in judging of the value of a man's energies, though it is right to give some prominence to the extrinsic value of labour, its value, for instance, for an employer, our first consideration should be devoted to that value which is natural and intrinsic to labour, and which attaches to it under

every variety of circumstances. Its *minimum* value will certainly be that value which is natural and intrinsic to labour; but that value being once allowed there will be variations of value to be considered depending on the varying utilities of labour for other people. Let us now go on to enquire in what the natural and intrinsic value of labour consists.

The primary and fundamental factor of the value of labour is not to be measured by anything extrinsic to itself, *e.g.* by the products of labour, but by its own *natural function and end.* Its value, in fact, *is* this function and end. In this, labour holds the same position as any one of a man's natural organs or capacities. The intrinsic value of the eye consists in seeing, the value of the ear in hearing. If an eye were removed there is nothing that could make up for its loss. The eye has only one equivalent in value, *i.e.* its own function and end. So also the true value of a man's labour energies consists in the natural end of these energies, in what they are meant to accomplish for a man.

What, therefore, is the end of our human energies, and what the end of labour, which, after all, is nothing else than the utilisation of one's energies? Their end is to supply the requirements of human life, the life and interests of the man possessing those energies.* It is these requirements that represent the true intrinsic value and equivalent of human labour. The man who gives up his whole labour day to another, puts at the disposal of that other all those energies with which nature has equipped him for the supplying of his own needs. Therefore, the just wage payable in return for the use of those energies, the only wage which could justly be represented as the equivalent of those energies, is a *wage capable of supplying the same needs* which our human energies are meant to supply.† *And the minimum*

* See note p. 349.

† For an answer to the question—what if the products of labour do not suffice for this?—see p. 352.

just wage will be a wage capable of supplying the minimum essentials of those needs, the essentials of human life. This, then, is the first measure and test for which we are seeking, the measure and test of the minimum just wage. It is a measure which is based on the nature of labour itself and its essential function.

Let no one say that this measure is indeterminate, that it lets the capitalist in for any charges which the labourer may care to put upon him. The essentials of human life are perfectly understood by even the poorest person. They include more than the essentials of the vegetative or the merely animal life—more than mere food. They are the essentials of *human* life as human. They are wider also than the needs of savages. They cover the essentials of civilised existence. They include, therefore, not only a sufficiency of food, but also decent habitation, decent clothing, some recreation and a sufficiency of rest. To pay in return for the use of a man's whole labour day * just what will feed him for that day is to treat him as a beast of burden and not as a man. The "pay" of the beast of burden is its daily food.

The "personal" and the "family" wage.

But the problem of the minimum just wage carries us farther still. The question suggests itself—are the needs which the minimum wage must be capable of supplying the personal needs of the employee only, or do they also include the needs of the workman's family? In other words, is the minimum just wage a "personal" wage only or a "family" wage? To this question we

* We use this expression, "a man's whole labour day," advisedly. In answer to our argument capitalists might suggest that what they employ is not a man's whole labour, but a portion of it only, ten or twelve hours out of the twenty-four. We answer—they utilise a man's whole labour day—all the hours that it is possible for a man to labour. The man who gives up to the capitalist all the hours claimed by the capitalist, *i.e.* ten or twelve hours, cannot undertake any other labour in support of his life. The capitalist, therefore, in this case has appropriated the labourer's whole capacity for work.

have no difficulty in giving the answer which is in our opinion the only answer compatible with natural law and justice. The minimum just wage is a wage which is capable of supplying not merely the essential personal wants of the workman, but (with certain reservations presently to be made) the essential wants of the normal or average family.

(*a*) Let us in the first place apply the test which, as we have already seen,* constitutes the supreme criterion followed in the determination of ordinary market prices, viz. the common estimate of men. That common estimate is certainly in favour of the family wage. "How could a man support a family on such a wage?" is the criticism ordinarily heard of wages falling below a certain level; and this criticism not only occurs in ordinary conversation but is repeated on public platforms and recorded in the public newspapers, and, so far as we are aware, without comment or contradiction by capitalists, at least of its main supposition, which is, that a just wage ought to reach at least the dimension of the family wage. And this common estimate of the value of labour possesses the same degree of authority in connection with the price of labour that attaches to it in connection with the prices of any ordinary marketable commodity.

(*b*) But it is possible to appeal in support of our contention, not only to the extrinsic test of the common human estimate, but also to reasoning based on the intrinsic nature of labour and its essential functions.† We saw that the natural function or end of the energies utilised in human labour is the supplying of one's human needs. But equally natural and imperative with the need of food and clothes and housing is the need which

* Page 317.

† Our reasoning here will show that according to the view here expounded the family wage is due not merely in *legal* justice (*i.e.* because it is required by the common good) but in *commutative* justice, *i.e.* it is the equivalent and just price of the labour which is hired out to the employer.

a father is under to support his children. It is, first, a need which a man is bound by natural moral law and obligation to fulfil. It is, secondly, a need which he is, as it were, physically compelled to fulfil, which every instinct of his nature impels him to fulfil. A father is, in the first place, bound by natural law to labour for the support of his children. *The capitalist, therefore, who monopolises all that father's labour is bound by this same natural law to pay a wage which will admit of the fulfilment of this obligation.* In the second place, as we said, the father not only *ought* to support his children, but *must* do so, is impelled by *natural* instinctive love, to do so—he cannot help sharing with his children that of which he is in possession ; and, therefore, to pay him a wage sufficient for his own personal support only, is to pay him a wage *insufficient even for himself*,* since part of that wage will go to his children under the operation of natural forces and instincts stronger than any external compulsion.†

This, then, is the extent of the minimum just wage—a wage that will enable a man to support himself and his family. This is the lowest wage that can, under normal circumstances, be paid to an adult, able-bodied man. But granted this lowest wage there is then room for variations above this level depending on differences in the quality of the labour engaged, on variation in demand and supply, and on differences in the varying

* The point is of the highest practical importance. The man who undertakes to feed a bird in possession of young ones, by giving it just sufficient for itself, really does not give it what is sufficient for itself, since nature would compel it to share its food with its offspring. The parent bird typifies the workman who, having given his whole labour day to his employer, is incapable of obtaining or utilising other means of support. Such a man must necessarily divide with his family what he receives from his employer.

† Notice that it is only the natural function of labour, and its natural ends, that should be provided for in the labourer's wage. The employer need not take account of other needs, for instance, of needs based on the fact that an employee becomes a member of parliament. Neither must he take account of other relations, *e.g.* the necessity of supporting the grand-parents of children. The natural family in its strict sense consists of parents and children only.

values of the products of labour. These will all be factors in determining the price of labour between its minimum and its maximum limits.

The meaning of the family wage.

It is important that we should determine how far exactly this theory leads us. In the first place employers have the right to adopt a general line of action in dealing with their workmen, and to pay, not according to the varying requirements of each individual, but according to normal and average circumstances only. The wages of labour, therefore, should be such as would enable a man to found *a family*, they need not be such as would suffice for a particular family or for any number of children above the average. In other words, the wage demanded by justice is the *absolute* not the *relative* family wage. Again, in fixing a father's wage, employers may take account of the many employments open to women and children, but only of such employments as are compatible with the essential rights and duties of women and children. Mothers cannot be asked to do the work of men. They cannot, for instance, be expected to work as chain-makers at the furnaces—a work unfortunately in which women are too often forced to engage—and though such employment is possible in their case, it is not employment which is consistent with the duties of mothers or the needs of girls. Calculations, therefore, built upon possibilities of such a kind are ineffective as exonerating employers from paying the full family wage. Thirdly, employers may take account of the many aids normally extended to the poor by different public bodies and by the State. In most modern countries education is to a large extent free, workmen are insured against sickness and unemployment, and money is continually being disbursed in one way or another. On all these things an employer may calculate as possible supplementary sources of

income. But a margin will, nevertheless, remain over and above the purely personal wage which only the employer can supply, and that margin it is the strict right of workmen to have included in their wage.

Married and unmarried men.

The question arises—should the family wage be paid to married men only, or should it be given to all adult able-bodied workers? Our answer is that it certainly should be paid to married men. But the very same reasoning that is available in their case would seem to hold also in the case of unmarried men. For our doctrine is that a man's labour has a certain intrinsic value determined by its essential function, and that value attaches to labour as such and in every case, since the essential functions are present in every case, and it attaches to it even though the complete functions of labour are not being actually exercised. Whether, therefore, a man is married or not, or is a father or not, he has a right to a wage which corresponds to the value inherent in labour, a value which is determined by the natural function of labour.

Besides, every man has a natural right to place himself in a position to marry; he has a right to save money for the needs of a future family, and it is only the family wage that can enable a man to do this.

Finally, in practice the distinction of married and unmarried in a wages account would be impossible. Men doing the same work should get the same payment, and any attempt to differentiate between married and unmarried men in favour of the former would be keenly resented. In wages it is the normal conditions that have to be taken into account, and normally all adult men are actual or prospective fathers of families.

Difficulties.

(1) What, an employer may ask, have I to do with the families of any workman? What is it to me whether they

have children or not? I employ a man to give me his "personal" labour; surely I am only bound to pay him a "personal" wage.

Reply.—An employer cannot possibly plead absence of responsibility in this way. In employing a father he monopolises labours and energies that can never be divested of their relation to a man's children. He necessarily, therefore, assumes responsibility in regard to these children. Again, let us imagine the principle of the personal wage everywhere adopted. It is certain that under such a condition of things the families of workmen must die out; and then employers would be forced to call upon their workmen to marry. The capitalist class, therefore, has need of the families of its workmen. The capitalist class expects the workmen to marry and to keep up the supply of labour. And, therefore, since having engaged a man's whole labour day there is no other way of maintaining these families except by the payment of a family wage, the employer has a duty to pay such wage.

(2) A second important difficulty is the following: What if the products of an employee's labour did not allow of the payment of a family wage?

Reply.—(a) If in any case it is unprofitable to employ labour on a certain work the capitalist is free not to employ labour. But if he employs labour he assumes the obligations necessarily attaching to his position as employer. (*b*) Again, this difficulty of the possible unprofitableness of labour holds under every kind of wages-system. It holds against the "personal" wage as well as of the "family" wage, since in any system products may fall short of the amount of the wage. Yet who would maintain that at least a personal wage is not due to labour in every case? (*c*) The same objection may also be raised in regard to any kind of exchangeable commodity; its value to the buyer may not be equal to the price required by the seller. Yet who will not admit that the seller's requirements are a necessary factor in the determination of the just price? (*d*) Lastly, the wages of labour constitute, as we have already seen, a first charge on profits, and should be fixed and allowed for before the net profits begin to be estimated by the employer. They should be fixed before the prices of the things which the workman produces are fixed, since the net profits depend on the prices. In other words, the cost of labour should not be determined by the prices of commodities, rather the reverse is the case—the prices should be proportioned to the cost of labour; and it is for the prudent capitalist to look before-

hand and see whether he can get these prices, and whether it is worth his while to start a business and pay the legitimate wage in view of the prices which the manufactured article is likely to bring him. It is the employer who should take the risk, for it is he who appropriates the profits when they arise.

These are the principal ethical problems that suggest themselves in regard to the duties and rights of employer and workman under the wages-contract. Our treatment, however, of this subject would be incomplete if we did not add some discussion, however brief and imperfect, on the question of strikes—a question which is essentially concerned with the conditions obtaining under the wages system.

CHAPTER XI

THE WAGES-CONTRACT (*Continued*)

ON STRIKES

Definition of the Strike and its Chief Kinds

In a broad sense of the word a strike is any wide-spread cessation of work. But in its narrower and more technical sense it means *an organised cessation of work on the part of a large number of workmen for the purpose of securing the assent of an employer to certain demands of his employees.*

In the *first* place a strike is of employees only. A strike of school-children is not a strike in the proper sense of that term. *Secondly,* a strike involves cessation of work on the part of a large number of men. An agreed relinquishment of work by one or two has neither the dimensions nor the importance connected in the public mind with the notion of a strike. *Thirdly,* the strike is a combined and organised movement. Any number of men might happen to relinquish their positions simultaneously and in the same firm, but unless there is agreement and organisation there is no strike. *Fourthly,* in the strike proper the bulk of the men do not ordinarily cease work with a view to obtaining employment elsewhere, but rather with a view to returning to work when the dispute with their masters is ended. Though not an essential element in the strike understood in its broader sense, for, after all, the strikers might from the beginning intend to leave their old and seek for new employment, the present condition would seem to be

in practice a normal and inseparable accompaniment of strikes, and in the public consciousness it even constitutes their most prominent and disagreeable feature. Strikers for the most part remain in the neighbourhood of the works that employed them, maintaining an attitude of opposition to their masters, and their hope is to regain their old positions but on the new terms to obtain which the strike is undertaken. We shall, therefore, allow this fourth element to remain as part of our definition of the strike.

Three classes of strike may be distinguished: first, the *simple* or *direct* strike, in which a number of men suffering from the same real or imaginary grievance strike for the remedy of this grievance; secondly, the *sympathetic* strike, *i.e.* a strike of men in sympathy with others, or a strike for the removal not of one's own but of others' grievances: * thirdly, the *general* strike, or a combined strike of all employees, not to secure the removal of a particular grievance, but for the purpose of exterminating capitalism altogether and placing the means of production in the hands of the trades-unions exclusively. This kind of strike naturally admits of degrees according as the strike involves the various trades of one country only or of all. In its complete meaning the general strike is of the second kind.†

The Morality of Strikes

The question whether strikes are lawful admits of no unconditional or universal answer, since the lawfulness or unlawfulness of the strike depends on the kind of strike which is adopted and the attendant circumstances.

* It is of many forms. A department of a particular firm may strike in defence of one of their number or it may strike in defence of another department. Again, the employees of one firm may strike in defence of the employees of another and wholly independent firm.

† The general strike is the strike by which the "syndicalists" aim at attaining their ends. It is, therefore, known as the "syndicalist" strike.

We shall, therefore, for the purposes of this discussion, consider each of the three kinds of strikes just mentioned, separately and independently.

THE SIMPLE OR DIRECT STRIKE

Every man has a full and clear right to resign his employment at any time that he wishes, provided that he has fulfilled all the conditions of the contract, for instance, those concerning the giving of due notice to his employer. But the question arises—have a number of men a right to combine and agree to leave their employment simultaneously in the hope of overcoming the resistance of their master in case of a dispute between employer and employed? The two cases are very different. For in the first case where only a single individual gives up work, no harm is done to the employer, who normally, at all events, can easily find substitutes to fill the places vacated by his employees. But in the second case the employer is gravely affected in his business. Even under ordinary circumstances it is not easy to find a large number of suitable employees in the short space of time required to prevent interruption of one's business. But the strike increases the difficulty to an enormous extent. We may take it for granted, therefore, that a strike means always considerable loss to an employer, in many cases irreparable loss. Machines lie idle, expenses accumulate without corresponding returns, the normal relations with other firms are interrupted, contracts fail to be fulfilled, customers go away perhaps permanently, and the stability of the firm is generally shaken.* The bad effects of a strike are often perceptible even many years after the strike itself has been brought to an end.

However, notwithstanding the many evils attendant on strikes, and we have no desire to minimise their

* These are the evil effects suffered by the employer. Later will be considered the effect on the employee.

importance, it cannot be claimed that the strike is intrinsically unjust or wrong. The first element in the strike, the mere cessation of work, scarcely requires to be justified; it is nothing more than the right of any man, once he has fulfilled the terms of his contract, to withdraw his labour and transfer it if he wishes to another employer. Any man is empowered by natural right to leave one employer and go over to another. At most an obligation might arise in charity not to leave off work where cessation of labour would put a master to great loss and expense; but we are here speaking about the *justice* of the strike, not of obligations in charity; and, moreover, obligations in charity do not arise where abstention from the strike would involve any kind of serious sacrifice for the workman.

The second element in the strike is that of organisation and combination, and here again it is impossible to maintain that the strike is intrinsically unlawful. Generally speaking, what a number of men may lawfully do, taken individually, they may lawfully do together, and the same they may lawfully combine to do. It is no harm to combine to do a thing which is not in itself unlawful. Granted, therefore, a just cause or end, it is the clear right of workmen to organise a strike for the accomplishment of this end.

These are the two essential elements in the strike, and in regard to them the question of justice can hardly be raised. But serious and very practical questions sometimes arise in regard to the justice or injustice, not of the essentials, but of certain common accompaniments of strikes, one of which must be considered here. It concerns the right of strikers to take means to prevent other workmen ("blacklegs"—as they are opprobriously called) from occupying the positions vacated by the strikers, and also the right of strikers to put pressure on their fellow-workmen to join in the strike. In regard to both points the issues in justice are perfectly clear. Just as the strikers have a right in justice to

vacate a position even at the expense of their employers, so also outside workmen have a clear right in justice to accept employment from any source that offers itself, and strikers have no right whatever to *prevent* them from so doing. The use, therefore, of physical violence, or even the threat of violence against these outside competitors is wholly unlawful in the natural, just as it is disallowed by the civil law. So also, and *a fortiori*, strikers have no right to compel their fellow-workmen to join in a strike, to use violence against them, or to interfere with their liberty in any way. These workmen have a clear right to decide for themselves when, and for the remedy of what grievance, they will go out on strike; they have the same right to decide against a strike that the others have to decide in favour of it. And, therefore, compulsion or physical interference of any kind is a violation of their natural liberties and rights.

But in both cases it is lawful to have recourse to *moral persuasion*, and to every means that can legitimately be regarded as falling under this conception. For, whereas physical violence is always an interference with human liberty, moral persuasion is not. Liberty is violated where a man is physically compelled to do a thing against his own judgment and will. Moral persuasion is an attempt to direct a man's *judgment*, to influence his *will*; and whereas the human body can be compelled, the will and judgment cannot; they are not subject to violence; they always remain in a man's own power. The attempt to direct or influence them is, therefore, never a violation of human liberty.

The difficulty, however, is to know exactly what acts are included under moral persuasion and, therefore, what means of dissuasion it is possible to use with outside workmen and of persuasion with one's fellows. Discussion, appeals, promises are certainly allowed. Physical violence certainly is not. Neither is the threat of violence, since the same law that forbids actual

violence forbids also the threat of violence.* Midway between these extremes stand the acts of reprehension, derision, objurgation, and also ostracism of one's fellows, concerning which it is difficult to give a definite judgment since so much depends on the degree to which they are carried and the spirit in which they are practised. Good-humoured derision and objurgation it would be hard to exclude totally, but even these when they become hurtful and offensive are violations of justice as well as of charity. Again, during a strike it would be unreasonable to expect the strikers to bear themselves to the non-strikers as if no difference had arisen between them, but complete ostracism, particularly if it outlasts the strike, is wholly wrong.

Strikers may object that if their own fellows may hang back on any occasion, and if violence may not be done to blacklegs, the efficacy of the strike as a weapon for removing the just grievances of workmen is reduced to *nil*. Our answer is, first, that even if the strike were rendered wholly inefficacious (which it is not) through the absence of violence, the use of violence would still be unlawful since, as we saw, violence is a clear violation of the rights of workmen to continue in employment or to seek vacated positions just as they please. And in this matter we cannot afford to take lower ground than the ground assigned by law and justice. The strike kept within lawful limits is terrible enough in its effects. But if strikers may regard themselves as free to do anything that is necessary for success then the strike becomes nothing but an appalling evil. If strikers may have recourse to violence, why not to killing? And if the strikers may kill why may not the capitalists also kill? And the long-suffering public—why may not they kill both? The strike, divorced from law and justice, becomes a weapon of universal destruction

* There are authors who allow indulgence in threats, *presumably*, of course, threats of violence, but apparently on no ground of reasoning. See Lehmkuhl, "Casus Conscientiae," p. 454.

instead of what it ought to be—a valuable though desperate remedy for a grave human ill. Secondly, if workmen cannot secure unanimity in their own body, and in that body we include the whole body of workmen including even the "blacklegs," then either they should not go on strike or if they do go on strike they must be prepared to put up with the weakness inherent in the position of a body divided against itself. But certainly such division in their own ranks gives them no right to dispense with the fundamental requirements of law and justice. The strike is only a combination of workmen using certain means to get concessions from their employer. Similar combinations occur in other spheres than that of labour. At elections, for instance, a number of voters combine to carry a certain programme through or to overthrow a government. But they have no right to attempt to impose their will on other voters, even though it is felt that through dissension a good cause may fall to the ground or an old injustice be perpetuated. In all such matters it is the right of every man to follow the line that seems best to himself. If that right were disallowed there would be an end to freedom in every department of conduct. It is the same with workmen. Dissension may or may not, in a particular case, be a grave source of weakness to labour, but that fact can never eradicate a man's inherent right to freedom.

The conditions of a just strike.

Though not in themselves unlawful, strikes are generally attended by certain evil consequences, and a man is not justified in striking in disregard of these consequences, except on the fulfilment of certain very obvious and intelligible conditions. These conditions are (*a*) a just cause; (*b*) a proportionate cause; (*c*) a right use of means.

(*a*) A strike cannot be engaged in without a just cause. For a strike, no matter how short-lived, is

attended by evil consequences of a very grave character —consequences for the master, for the men themselves and their dependents, and for the public at large. The men who go on strike are indirectly responsible for these effects, and a just cause is always required for the assumption of indirect responsibility for consequences that are evil.

For another reason also a just cause is required, viz. that the cause which brings about the strike is the same thing as the end aimed at in the strike, and the end of our action should be just. A man cannot promote a strike, therefore, in order to revenge himself on his employer or to humiliate and weaken employers as a class. But a strike may be undertaken for a just wage, or to secure a reasonable number of working hours, or for some other cause of the kind.

But if a just cause is necessary in the case of the strike, it follows that the strikers should be *aware of the cause* for which they are striking and of its justice, otherwise their sin is the same as if no just cause could be pleaded. But workmen can judge of the justice of their cause in either of two ways—directly or indirectly, *i.e.* they may make themselves personally acquainted with the exact nature of the issues for which the strike is undertaken, and with their justice or injustice, or they may rely on the judgment of their leaders and make that judgment their own. In the latter case, however, workmen should be in a position to know that their leaders are right-principled men, men of proved competence and integrity, and possessed of such qualities of mind and character as will afford a reasonable guarantee that the body of workmen will not be led into any wrong or irrational courses.

The question, "what causes are just?" is too wide and troublesome to be considered here at any length. Under the just cause are included such grievances as low wages, over-work, unsanitary conditions of work. In connection with the first heading, *i.e.* low wages, we

think that one important consideration ought not to be omitted, viz. that a strike may lawfully be undertaken not merely in order to secure the minimum just wage, but also a wage above this level. The labour of the workman, like other things, has its just price, which price is found to lie between two extremes or limits, the lower and the higher. Now, just as a capitalist may, provided he pays a just remuneration, decline to go above the lower limit, so workmen may, if they like, refuse any wage below the higher, and may even go on strike in defence of this higher wage. It would, of course, be unreasonable if strikes were to be commonly indulged in for the absolutely highest wage paid in connection with any particular kind of labour. The strike is so full of dire possibilities for everybody concerned that insistence on the last farthing of the highest wage would hardly be regarded as a sufficient motive for permitting these evils. What, however, we wish to emphasise is that a strike need not necessarily be for the minimum wage, and that a strike may be lawful even though the wage demanded lies somewhat above the lowest limit and even in the region of the highest.

(*b*) The cause of the strike should be *proportional* to the gravity of its effects. We have already enumerated some of the evil consequences affecting the employer. There are others equally if not more grave on the side of the employee, of his family, and of the public at large. Some of these evils are physical and mental (hunger, poverty, misery of mind), some are moral. The latter are practically inseparable from the strike. A strike brings into exercise the most violent and terrible of human passions. Directly it involves innumerable violations of charity. Incidentally, yet almost invariably, it involves drunkenness, irreligion, loss of self-respect both on the part of women and men, particularly the former. In times of strike reason seems to lose its sway over the most normal minds, and the best and most circumspect of persons tend to become lowered and

demoralised. If it is a criminal thing for capitalists to drive workmen by the exercise of cruelty or inconsiderateness to the adoption of this terrible remedy of the strike, so also it is most sinful for the workmen to make themselves responsible for these consequences without the gravest cause. A strike undertaken for some light or trivial cause could never be lawful. It must, if it is to be justified, concern the means of sustenance or some of the other things necessary for a proper human life.*

(*c*) Only *means* in themselves lawful may be utilised in the conduct of a strike. These lawful means are two-fold—first, cessation of work on the part of the labourers; and, secondly, the exercise of a certain degree of *moral* compulsion on outsiders to prevent them from taking over the strikers' places. Beyond this the strikers may not go. They must not injure or interfere with the employer in his person or his property, and, as we have seen, they must not use physical violence against the non-strikers or against those who attempt to occupy their position. These, as has already been proved, are clear violations of right and justice.

THE TRADES-UNION EXECUTIVES

The consideration of these conditions leads us to say a word on the trades-union executives, *i.e.* those bodies which control and administer the union, and whose function it is to declare and regulate strikes. A strike is unlawful unless the cause is just and proportionate, and unless the means used to carry it through are in accordance with law and justice. Before a strike is declared, therefore, the trades-union executives should give the fullest and most careful consideration to the justice and gravity of their cause. They owe this duty not only to the capitalists but to the workmen and to the public at large. Also when the strike is begun they must use, and effectively use, all their influence to keep the men in control and to prevent outrage and injustice. From this it will be evident, first, that the executives should consist of men who are upright, just, and God-fearing; secondly, that they should be men of tried

* See p. 347.

prudence; thirdly, that they should be responsible to the unions. A word on each of these.

A bad or conscienceless set of labour-leaders are a scourge to society, and a scourge to the unions which they direct. Being unrestrained by any sort of moral or religious principle they will rush a union into a strike without thought of its justice or morality. Such men will often be moved by other motives than sympathy with the men—vain glory, the extortion of money from frightened capitalists and from affianced societies, and they will ruthlessly subject capitalist, workmen, and the public at large to any suffering for the attainment of these ends. Besides, bad men are incapable of judging of the issues of justice between one side and another even if they were willing to do so. Their minds are distorted by false and immoral principles, and often they are utterly devoid of a moral sense, that is, they are wanting in moral perceptions of any but the crudest kind. They are not capable, therefore, of judging aright, and should not be entrusted with the function of directing the judgment of others in a grave matter.

Again, the leaders of unions should be *prudent* men. Very often great and perhaps necessary social movements are proposed and started by hot-headed leaders, men of immense will-power and perhaps also of surpassing intellectual ability, but wanting in caution, deliberation, forethought, reserve. Such men, though necessary for the initiation of a great movement, are quite unequal to the task of directing it or carrying it through, and they are altogether unfitted for the momentous and delicate work that so often falls to the lot of a trades-union executive.

Finally, a trades-union executive should not be allowed to assume the *rôle* of tyrant over the men, or be allowed to get such a hold over the society as to leave the members no freedom of action when difficult circumstances arise. The members of a trades-union can never divest themselves wholly of responsibility for the courses of action pursued by the union, and, therefore, the leaders of the union should be responsible to the members *and dismissable*. The machinery by which an executive is made responsible to the union is a question that cannot be considered in the present work.

THE SYMPATHETIC STRIKE

The sympathetic strike, logically and consistently developed, is based on a very simple and intelligible

principle, viz. that whenever the employees attached to a particular firm declare a strike, all other employees should abstain from doing work relating in any way to the business of that firm. Generally the work which these other workmen are expected to avoid is that of handling " tainted " goods. A strike occurs in a certain colliery. No railway men, for instance, will handle goods belonging to that colliery. If compelled to do so they strike. Then other colliers refuse to dig coal for this railway. Carters decline to carry merchandise to or from it. In brief the principle is—let any body of workmen strike, and all other bodies whose work is in any way related to the first must strike in sympathy with it. A strike anywhere, no matter what its nature, circumstances, or causes, is the bugle call which brings out every " related " workman from his employment. These later strikers may know nothing of the justice or injustice of the cause alleged as the ground and justification of the original strike. That is a matter for the original strikers altogether. The great magnetic principle of the sympathetic strike is that a body of comrades in difficulty must be supported, that the workers must have solidarity, that the fight of any portion of the labour body is the fight of the whole body. This is the full and essential programme of the sympathetic strike, a programme perfectly clear and intelligible and consistent with itself. Other minor and partial kinds of sympathetic strike there are, and these we shall consider at the close of our present discussion.* But what we have here to consider is the full and complete programme of the doctrine of " tainted goods "—the chief and essential form of the sympathetic strike.

The question must now be considered whether the sympathetic strike as based on this doctrine of " tainted goods " is lawful or unlawful. Our view is that it is

* p. 368

unlawful and we base our opinion on the following arguments :—

(*a*) It is opposed to the nature of the labour-contract. The labour-contract is one in which a number of workmen make over their labour to an employer, giving him full control* and use of their labour, in return for a wage of which they also have full use and control. What would be thought of an employer who attempted to dictate to his workmen how their money should be used ; or, more important still, who sometimes withheld from them a portion of the stipulated wage ? The money which a workman earns—all of it—is his, and, therefore, he has a right to receive it in full from his employer and to use it as he himself chooses. On the other side also a similar relation and right obtain. The workman hires out his labour to his employer, thereby giving the latter full use and direction of it, and, therefore, it is for the employer and not for the workman to determine (within, of course, the terms of the contract) what work is to be performed and what goods are to be handled.

(*b*) The essential and immediate effect of the sympathetic strike is, not to bring the original strike to an end in favour either of employer or workmen, but to *spread the strike*, and, therefore, to make things more difficult for other employers and workmen, and the public at large. Rarely, if ever, has the sympathetic strike any effect whatever in ending the original dispute. But even if it did aid the original strikers such a consequence would be wholly accidental and would be completely outbalanced by the essential and intrinsic effect of the sympathetic strike, which is, as we have said, merely to spread the area of the dispute and not to limit or to end it.

(*c*) In the sympathetic strike there is no proportion such as is always required by reason between the remedy

* Namely, such control as labour is capable of, *i.e.* the employer can *direct* the labour of the workman.

applied and the effect attained. Carried to its logical extreme it would mean a stoppage of work all over the land for the sake of a single group of men or a single individual.

(*d*) If workmen may strike in order to help other strikers to defeat their employers, then it would be lawful for the capitalist in time of strike to dismiss even those willing to work in order that these latter might compel their comrades to submit; it would also be lawful for capitalists all over the country to join together, and close up every workshop in the land in order that the workers generally might be starved into compelling the original strikers to resume their employment, and on the masters' terms. In other words, if the sympathetic strike is lawful, the sympathetic lock-out is also lawful; and since the latter is regarded, and rightly regarded, as utterly inhuman and immoral, it follows that the sympathetic strike is also immoral.

(*e*) We now come to the final, and we believe, the most important argument of this series of arguments on the morality of the sympathetic strike. We saw before that no body of men may lawfully go on strike without a just cause; we saw also that they are bound to make certain of the justice of their cause before embarking on the strike. But the policy of the sympathetic strike excludes the fulfilment of this condition. For under the sympathetic policy there is no machinery for securing even generally the justice of strikes, and besides, under this policy workers are supposed to strike not because of the *justice* of their comrades' cause, but simply *because their comrades are on strike.* The original strikers may have a very poor case indeed, but the other workers must go out all the same. In the sympathetic strike proper it is the *fact* that men are actually on strike that determines the action of other union bodies, not the *justice* of their case, and, therefore, the

sympathetic strike is wrong in its essential ground and principle.*

All this reasoning relates to the case where the trades-unions adopt the sympathetic strike as a regular policy, and work it out consistently, the rule being that no tainted goods are to be handled, that is, no goods owned by any capitalist whose workmen are on strike. This wholesale adoption of the "sympathetic" principle, as we saw, is wrong and can never be justified under any circumstances.

But a form of sympathetic strike must now be distinguished to which the reasonings just given do not apply. We shall suppose that the policy of the sympathetic strike as just described by us is *definitely excluded*, that trades-unionists are not expected to strike in sympathy merely because other workmen happen to be on strike. But let us imagine that on a particular occasion the men of a certain factory find themselves confronted with a particular case of injustice, *i.e.* a grave and manifest injustice is being done to some of their comrades. They are, let us say, being cruelly used by their masters, or they are not paid even the minimum wage, or the work that they are asked to do is positively inhuman. Here there is no question of a refusal to pay the highest wage, but of a refusal to pay the lowest, no question of a struggle for shorter hours merely, but of a struggle for "human" hours. There is question, therefore, of a manifest and crying injustice, an injustice, perhaps, which is limited to a few,

* In the sympathetic strike the men would find it exceedingly difficult, if not impossible, to know whether the original strikers are right or wrong. Not only do they belong to different employments but their work may lie in different countries. Neither can they trust the judgment of the original leaders, since they neither know these leaders nor have they elected them to their positions. But whether it is possible to discover the justice of the original cause or not makes very little difference in the case of the sympathetic principle. Once a strike occurs in a particular factory all goods consigned to that factory are regarded as forthwith tainted goods, and on the mere ground that a strike is now in being.

but which cannot be removed except by a strike on the part of the whole factory. The question arises, is such a strike lawful, or must the few and apparently powerless sufferers be compelled to make their fight alone? Our answer is that a sympathetic strike in the circumstances would be quite in accordance with justice and the moral law. What else does it amount to except the protecting of a certain number of helpless individuals against aggression and *obvious* injustice on the part of the capitalist. But the conditions which justify the strike in the present instance are very different from the conditions of the unjust sympathetic strike which we have already considered. For the present strike affects the guilty employer only. In the other case even innocent employers become involved. The present sympathetic strike relates to cases of obvious injustice only. The sympathetic strike which we have condemned is a strike undertaken in support of men on strike *for any reason.* In the present case it is supposed that the justice of the cause is directly and immediately known to the strikers. This is impossible once the strike begins to spread to other firms.

This limited form of the sympathetic strike is not, therefore, to be regarded as intrinsically unlawful. But even in this limited form the sympathetic strike is always dangerous, and ought not to be undertaken without the gravest consideration, and not before all other means have been exhausted for securing for the workmen a just wage and just conditions of labour.

The General Strike

The consideration of the general strike need not detain us long. It is a strike undertaken for the overthrow of the capitalist system. It aims immediately at making the position of the capitalist untenable, at so worrying him and so reducing his profits as to compel

him to hand over his business to his own workmen for whatever price he can get, or for no price.

Obviously this strike is wholly immoral, wholly unjust. It is immoral in its *end*, which is the extinction of private ownership in capital altogether. The trades-unionists have no right whatsoever to exclude individual private owners from industry. What are the trades-unions themselves but private companies, constituting not more than a seventh or eighth part of the entire population—in some countries not a twentieth part?

The general strike is wrong also in the *means* adopted for attaining its end. Present capitalists are established owners, with all the rights of owners, and no man has any right to attempt to injure them, to render their property useless, or to worry them into surrendering their possessions to others. The "general" strike, therefore, is wrong and immoral in its end and in its means.

THE REMEDY

As long as government continues its *laissez faire* attitude towards disputes arising between capital and labour, strikes with all their attendant evils will continue. That attitude it is exceedingly hard to justify. In all other departments of justice the State is insistent in exercising her authority. Disputes as to ownership and the rights of individuals she regards as her proper domain when there is question of such things as houses, lands, and chattels of various kinds. Why should the rights of labour be excluded from her jurisdiction? Why, *e.g.* should it not be in her competence to declare that a workman shall have a right to such and such a wage, just as she declares he shall have a right to notice before dismissal, or a right of way in land, or this or that right under a mortgage? It may be said in answer that it is the business of the State to *sustain* the rights of individuals, not to create rights much less to destroy

existing rights; and that at present it is the right of every employer to make the best bargain he can with his workmen. We answer, government has a perfect right not only to *sustain* existing rights but also to determine and even to create rights. It is largely by the authority of government, for instance, that railway fares are determined. Why not determine by public authority the proper wages of labour? Government has immense power in determining and even extinguishing rights and titles. She will extinguish, for instance, a man's right to his houses and lands when there is question of some great public good like the building of a railway. And surely the exclusion of strikes is a grave public necessity.

In every country there should be set up special tribunals authorised to deal, and to deal compulsorily, with all questions concerning the nature and conditions of labour, and these tribunals being once set up, both strike and lock-out should be strictly forbidden as at once unnecessary and opposed to the public good.

CHAPTER XII

ON INJUSTICE IN REGARD TO PROPERTY AND ON RESTITUTION

THE reader will by this time probably have forgotten that we began the consideration of this subject of injustice in a very early chapter of the present volume, and that of the three ways in which it is possible to injure others, two were even considered at some length, viz. injury to a man's person, and injury to his character. Before going on to treat of the third kind of injury *i.e.* injury to another's property, it was necessary to establish the existence of property and to enter into the whole question of the foundations and titles of ownership, together with other kindred but fundamental questions, such as those of socialism and of contracts. It is only now that we find ourselves in a position to resume our consideration of the question of injury, and in particular the question of injury to a man in his property.

Let us, however, for the sake of clearness and completeness, recall the headings of our previous argument.

Any breach of justice or of a man's right is called an *injury* or a *wrong*. Now a man has rights to *three* forms of goods, and, therefore, he may be made the victim of injury in *three* ways.

(1) A man has first a right to his life, to bodily integrity and to liberty. A breach of right in any one of these respects is to be reckoned amongst the gravest wrongs which one man can do another. Restitution, however, except perhaps in the case of deprivation of liberty,* is impossible in these cases, as the injury done is irreparable.

* *i.e.* a man can be released.

(2) There is also the right to one's good name, which is violated by slander and libels in various ways. In such cases there is a grave obligation to undo the harm that has been done and to restore to a man his good name.

(3) Then there are rights of property and injury to property, this latter being the form of injustice with which we are specially concerned in the present chapter.

The rights of an owner over his property are the possession of it, and the disposition and enjoyment of property at the owner's discretion.

Now the right of property can be invaded in two ways. First, property may be taken out of the owner's possession and converted to the use and enjoyment of the person who takes it. This we speak of as *stealing*. Secondly, property may be destroyed or injured without any material benefit to the wrong-doer. This act is spoken of as *damage*. These two special kinds of injustice will now have to be discussed; but before considering them it is necessary to point out that in both cases there arises a special obligation of reparation which is known as *restitution*. Restitution is simply the restoration of the original equality that existed before the injury was done. I take five shillings from a man, and thereby disturb the equality that originally existed between us. There is only one way of restoring the balance, and that is by giving him five shillings. I destroy or damage a man's goods to the amount of five shillings. I clearly have a duty of paying him five shillings, thus *as far as I am able* restoring the original equality between us. That as a matter of fact I shall now lose five shillings and, so, am worse off than before, is a consequence of my own making that cannot be helped.

The duty of making restitution to him whom we have injured by robbery or damage is too obvious to be disputed, and it is not disputed, by any one. But it

will be necessary for us to determine as carefully as possible *when* a moral injury is done, and also *what conditions are required* in order that it should create in the wrong-doer an obligation of restitution.

Stealing

Stealing means removing property from an owner against his will, and taking over the use or disposition* of such property to oneself. We use this term to include all cases of wrongful taking, whether it be done openly and by violence or secretly; whether it be done directly as in ordinary robbery, or indirectly, *e.g.* by false pretences, by extortion, or by fraud. These various forms of wrongful appropriation have their own moral significance, but we limit ourselves here to what is worst and most essential in them, viz. the wrongful taking of what belongs to another.

The right of using or disposing of an object according to his own wish is the first and essential right which ownership confers on an owner, and no other can possess this right of disposition except by the wish of the owner. The thief defeats this right of the owner, and in that lies the moral guilt of stealing. The wrongfulness of stealing lies in taking under one's own control another's property against his wish or without his consent.

There are three cases—rare cases indeed—in which a man may take and use the property of another against his wish without doing any wrong or injury. *First*, an owner may sometimes refuse to dispose of his property to another though he may be under a moral obligation to consent. Now, if this obligation to consent is an obligation *in justice*, he in whose favour the consent is due may lawfully take the property owing to him, against the wish of the owner.† If, however, it is an

* This includes giving it to another.

† For the sake of public order, however, he should, if possible, first seek the aid of the public courts. Some persons might contend that in the case given in the text the thing which one ought to give

obligation in charity or religion only, this obligation will be no justification for taking a man's property against his wish. Thus if I get a decree of a court for payment to me of five shillings I may lawfully take it, no matter whether I have the consent of the other party or not. Again, if a debtor will not pay his debts, the proper thing is to set the law in motion against him and he will be compelled to pay. In that case his creditors may take his property without regard to his wishes. This is the first case where the goods of another may be taken without that other's consent.

A *second* case is this. A debt is actually and certainly due, but for some reason or other the person to whom it is due has no remedy at law, the necessary evidence, let us say, having been lost. If an opportunity offers of quietly taking payment of that debt there would be no wrong in doing so. Taking property in this way is no harm, provided all the required conditions are fulfilled; but it is a dangerous process, and ought to be restricted. This summary process of recovering one's debts, since it has to be carried out not only without the consent, but without the knowledge of the owner, is called "occult compensation."

The *third* and last case in which a man may lawfully take property against the will of the owner is the case where one is in *extreme* need. The necessity to take it must be supreme and it must be a question of one's life or something almost equivalent to one's life, *e.g.* the life of a wife or child. We may distinguish three degrees of necessity—*common*, in which numbers of poor people live, who are, however, very far from destitution; *grave*, in which a man is much worse off than the general run of poor people but is not actually destitute. Now

to another is the property of that other, and, therefore, that the present is not a case in which one has a right to take the property of another but property which is his own. But on the other hand nobody would maintain that the money which a debtor owes to a creditor is the *property* of the creditor. He has a right to it, but it is not his property till he gets it.

neither common nor grave necessity will justify a man morally in taking another's property, though it will be an extenuation of his guilt. But *extreme* necessity, when one is in danger of losing his life or something nearly as valuable as his life, will justify a man in taking anything he needs without the consent of the owner. The owner in fact has no right to prevent such a person from taking what he requires, and if the owner does prevent him he is guilty of injustice and will be morally responsible for the consequences. That an owner is bound *in charity* to relieve a person in extreme distress hardly needs to be proved. If charity exists at all it certainly urges one to relieve a man in extreme distress. But extreme distress also places an owner under an obligation *in justice* to extend relief, as was proved in an earlier chapter of this work.* This obligation in justice is based as we saw on three facts, viz. that all ownership begins in occupancy, that a condition of valid occupancy is that what is taken into possession should not be *absolutely* necessary to others, and that this condition always attaches to property even after it has been taken into possession.

It is a clear result of the right to take property when one is in extreme distress, that it extends only to as much as is really necessary. Also if the person in extreme need has property of his own he must sell it in order to obtain relief; if he cannot do so he may take property from another, but is bound to make compensation to the dispossessed owner out of such property as he possesses or has a claim to at the time that he took the property of his neighbour; but no obligation of compensation arises in respect of property which he may later acquire through good fortune, since nature in imposing her obligations at the time that another's property is taken, knows nothing of fortuitous acquisitions later; her obligations at any time are built on actual fact and not on future chance.

* See p. 135.

The Duty of Restitution

We have to distinguish three sets of obligations under the head of restitution, viz. those arising out of possession *mala fide*, those arising out of possession *bona fide*, and finally the obligations of those whose ownership is doubtful.

Possession mala fide.

I. A person who has stolen property and is still in possession of it must hand it back as soon as possible to the owner, together with all its *natural* fruits and increase.

This is the first and most obvious duty of one who wishes to restore the equality that was disturbed by his act of stealing.

II. He who steals property is deemed to undertake, pending restitution, the assurance of the owner against all risk in respect of the stolen property.

This construction of the responsibilities of a person who has stolen and keeps property is the *natural consequence of his intention* in taking the goods. His intention certainly was to use and enjoy the property in every way * an owner could, and in fact to take the place of the owner as completely as possible. Now it is natural to place the disadvantages of ownership where the advantages lie; indeed, the advantages draw to themselves the disadvantages or *onera*; and, therefore, the thief must accept the *onera* of property which he takes into his possession along with the advantages. And in this he is not in a worse position than a true owner would be. Neither thief nor owner has any desire for the responsibilities and risks of ownership, and these disadvantages are accepted only because they are entailed by the *enjoyment* of property. There-

* This holds true even though the thief intends to give the stolen property to another. Giving to another is one of the chief privileges of ownership.

fore, if a man takes to himself the ownership of goods, natural law will see that he assumes the risks also. Now one of the undesirable incidents of ownership is that when property is lost or destroyed, or perishes from any cause whatever, the loss falls on the owner. Nor will the plea that he has used all possible diligence help him; nor can he divide the loss with former owners on the ground that if he had left it with them it would have perished all the same—he has to bear the whole loss. The thief is in the very same position. He, and not the real owner, will have to bear the loss, because by his own act he has assumed the risk as well as the profits or advantages of ownership, and so the loss cannot fall on the true owner, which is what we meant by saying that the thief is deemed to guarantee the owner against loss. If, therefore, the stolen property is lost or destroyed or perishes in any way, the thief will have to be at the loss, *i.e.* he will have to pay the owner the value of it.

III. The thief must also indemnify the owner for all damage incidental to the theft as far as such damage was foreseen by him. The owner may have to suffer losses which he would have avoided but for having to lie out of his property. He may have to borrow money at interest; he may have to forego chances of profit; he may even be called on to account for the money, and through inability to do so may lose his place or even his liberty. These are incidental losses, and the thief is bound to make compensation for them in so far as he foresaw them,* for to that extent they are due morally to his act.

IV. In case the stolen property has been sold, consumed, or lost, the price of the goods *at the time that they were disposed of* must be restored to the owner, and, in addition, compensation must be made for incidental loss, if any, suffered by the owner in not being able to

* It is enough if he foresees these consequences confusedly.

sell the property on more advantageous terms than the thief obtained.

This rule covers all cases where the price of the property varied during the time of unlawful detention. As soon as the thief disposes of the goods the whole price belongs to the owner, even though it was a higher price than the owner himself would have obtained. If, on the other hand, the thief gets a lower price than the owner would have obtained, the thief is bound to make good the balance to the owner.*

The bona fide holder.

It sometimes happens that an honest man becomes possessed of property which he believes to be his own, but which later he discovers to belong to another. This is the case of the *bona fide* or innocent possession of another's property. On discovering that he is not the owner such a person has certain obligations.

I. He must restore the property with all its *natural* increase; but he does not insure the owner against loss pending restitution—he is responsible for negligence only.

II. If he has consumed or sold the property, he is accountable to the owner to the extent of the value that still survives to him from the property, but not further. For, applying the principles laid down in the last section, the ownership of the property in question always lay in the true owner and so did the risk, the holder never having intended to divest the owner of his property; and though as a matter of fact he did enjoy the use of this property, his enjoyment of it was simply owing to a fortunate mistake. But the *bona fide* holder is bound to restore whatever is in his hands as soon as the mistake is recognised.

III. An honest person who has bought property from a thief without any notice of the bad title of the seller

* For a full discussion of the various cases arising under this head of *mala fide* possession, see Lehmkuhl, "Theol. Mor." I. p. 586.

will have to restore the property, notwithstanding, to the owner and then get back the price from the thief. This is the rule of natural law. But an innocent buyer is exposed to great hardships under it; and, therefore, it is usual for the positive law to protect, as it has a right in natural law to protect, such a buyer against the worst of these hardships. But, indeed, as long as there are thieves at large the loss incident to stealing must always fall on some innocent person, and so whatever devices may be framed by positive law it is some innocent party that in the end must always suffer. The protection of innocent persons from injury in all such cases does not lie so much with the protective laws as with the police.

The case of doubtful ownership.

Besides the two categories of persons in possession of property of which they are not owners there are others who are in possession of property in respect of which they are in some doubt as to whether they or others are the true owners. We cannot in a work like the present go into this subject at any length, but the first duty of a man who doubts in a practical matter on which a decision must be taken is to resolve the doubt by study and enquiry.

Again, if possession was originally obtained *in bona fide*, and if the doubt which subsequently arose cannot be cleared up by investigation, the possessor may continue to keep the property in spite of the unsolved doubt.

But if a doubt attended his *getting possession*, he ought not to hold it against one who had *bona fide* possession of it; and if no one has this advantage the property ought to be divided *pro rata*.

Damage

Where property is destroyed or injured, not taken, and the wrong-doer gets no benefit from his act, that act is spoken of as damage.

It is clear that the doing of damage to another's property gives rise generally to an obligation to make restitution, but as this obligation does not always arise it is necessary to examine carefully the conditions under which this liability is incurred.

The *first* condition is that the damage should be a human act (*actus humanus*, not *actus hominis*); in other words, the damage should be not accidental or due to a mistake, but malicious. It is necessary that there should be some moral fault. If a man in doing damage does not know what he is doing, or does not know he is doing wrong to another person, he cannot be made morally accountable for it; and the owner will have to bear the loss just as he would if it were done by some non-moral cause, such as a machine or an animal. There is no remedy in such a case. Damage done by very young children is of this kind and must be regarded in the light of an accident, which one can guard against in the future, but for which no person can be held accountable.

Moreover, to render one's self liable to a grave duty of restitution, we require a human act with a full realisation of the *serious damage done* and also a realisation of the *serious guilt that is incurred.* An act that is to lay on a man a grave obligation of making restitution must be an act which is fully "moral," *i.e.* not imperfect, either by reason of want of knowledge or of consent.

This, then, is the first condition—the damage must be the effect of a human act springing from a competent knowledge that wrong is being done and guilt incurred.

The *second* condition is that the act should be unjust in the strict sense, *i.e.* it should be against commutative justice. It is only commutative justice the violation of which gives rise to an obligation of restitution. If I do not appoint a man to an office for which he is the best man, but still to which he has no absolute right in strict justice, I am not bound to restitution. I do

wrong: I offend against distributive justice; but I do not injure the applicant in any of his strict rights.

It is easy to see whether my action is unjust or not when it is a question of damage done to a man's actual property. But it is not so easy to say when a man becomes positively unjust in preventing another from getting some property or some salary to which he has looked forward. If a man has a strict right to the advantage or position in question I am unjust if I interfere at all. But if a man has no strict rights to the property, position, or salary, he may still have a strict right to be allowed a fair chance, and consequently no fraud must be used against him, and *no unfair advantage* must be taken of him—the rules of the game must be played. It is said that in some departments of government the clerks have sometimes withheld from the heads of departments the applications of candidates for positions. Such an act would be a most grave violation of commutative justice. Again, if I know that some one is likely to leave a large legacy to a certain individual I may dissuade the testator by fair and true arguments from doing it, I may even mention personal faults of the individual in question; but I cannot use threats or fraud, nor can I slander the individual in any way. This rule, we admit, is vague; but it will give us some idea of where an injury may begin which would entail restitution.

The *third* condition is that the person who is charged with the damage should really have caused the damage. Hence, first, if no damage has actually resulted no liability to restitution can exist. Hatred and intention to do damage, or an unsuccessful attempt at damage, gives rise to no liability, even though there may be grave violation of the moral law.

Again, the damage done should really be caused *by my act* if I am to be held responsible for it. If I fire off a gun in a crowded street for mere fun, I am to be held responsible for all the damage effected. But a

trespasser in crossing a field at night is not to be held responsible if in the darkness he knocks against some person and causes his death; and he would not be responsible even if such an incident occurred to his mind as possible. Such an incident could scarcely be said to be an effect of trespass. It is an effect of a most complex combination of circumstances which the trespasser did not himself cause. Again, a criminal is not charged with injury to another because his crime is falsely imputed to that other by the public. He is not the cause of this false attribution.

It is asked sometimes whether a man who intends to burn down the house of one person, and by mistake burns the house of another is liable to make restitution. The reason of the doubt is that an injury is done to a certain individual which was never intended. Different solutions are given, but in our opinion a man who burns down another person's house knows well that he is doing grave damage to *the owner of that house*, and it is immaterial whether he knows who the real owner is.

It remains to say a word on the *amount of restitution* one has to make for damage done. As a rule it is the exact equivalent of the damage. But if the damage is greater than the person supposed he was causing, is he to be made liable for what he really did or for what he supposed he was doing? The answer is clear. A man is not, chargeable for damage except in so far as it was caused by a human act based on knowledge. Therefore, no one can be charged with a greater injustice than he thought he was inflicting or for a greater damage than he thought he was doing. The rest is accident.

On co-operation.

When several persons have had a hand in doing an injury the problem of co-operation is introduced.

Co-operation is either *positive* or *negative*. Positive co-operation occurs when one person positively helps another in wrong-doing, *e.g.* when several persons con-

spire to kill another. Negative co-operation means neglecting to prevent injury which one is under a duty to prevent. Thus a policeman is bound to prevent a thief from breaking into a house, and if he neglects to do so he is a co-operator in the crime. The chief servant of a house has an obligation to protect his master's property against all, even the other servants, whilst the other servants have an obligation to protect their master's property at least against all outsiders. Neglect to perform one's duties in these cases amounts to co-operation in another's guilt, and the very same obligations arise in respect of it that arise in the case of positive co-operation.

In co-operation each of the persons implicated has a share in the guilt and in the liability that arises to make restitution. A man's guilt and his responsibility for reparation go hand in hand, so that whatever will make his material co-operation innocent will also relieve him from all obligation to make restitution ; but to the degree in which he is guilty he must make restitution ; we may say then that partners in wrong-doing are bound to make restitution generally in proportion to the share they had in the wrong. A man cannot be held responsible for more damage than he has himself accomplished.

Applying this law we find that as a rule each one is responsible for a part only ; but there are cases where each is bound to make good all the loss in default of the others. Such is the case where several *conspire* together and act as an organised band, or when the co-operation of each is necessary, for in these cases each becomes an actor in all that is accomplished. Again, full responsibility attaches to each one who did what was *sufficient* to cause the whole damage. If five people lay each a sleeper over a railway track each is responsible for the whole damage done.

These are cases in which the partners are severally bound to make good the whole damage or loss in default of the rest.

CHAPTER XIII

THE FAMILY AND MARRIAGE

In the preceding chapters of the present volume we considered the duties and rights of man as individual. We now go on to consider man in society and the various requirements of natural law in regard to society. Now though there are many kinds of society differing from one another in aim and importance, there are only two kinds of human society that are instituted by natural law, viz. the family and the State: and since Ethics is the science of human conduct in so far as it is governed by natural law, our discussion in the remaining chapters of the present volume will be devoted to the consideration of these two forms of society—the family and the State.

Before, however, proceeding to our discussion on these two special forms of society it will be necessary to say what is meant by society in general, and also to enumerate its various kinds.

By society is meant *a stable union of several persons bound to a common line of action for the attainment of some common end. First*, it is self-evident that every society consists of several persons, *i.e.* any number more than one. A single individual could not constitute a society. *Secondly*, every society is to some extent an enduring union, not necessarily a permanent union, but a union designed to last over a considerable period. *Thirdly*, every society is held together by the *moral* bonds of "end and means." Mere local contiguity would not be sufficient to constitute a society. Local contiguity is not even a necessary condition of the social unit, since a single society might be constituted

of members locally very widely separated from one another. The social bond proper consists in the common purpose of its members and the common means chosen for its attainment. By a common means we do not intend to connote identity of action on the part of all the members. The various members constituting the social unit have often set to them widely different tasks for the attainment of the end. What the conception of society supposes is the utilisation by the various members of some portion of the *common* means whereby the end is to be reached. It is through the entertainment of a common purpose, and the pursuit of this purpose through a defined common means, that the plurality of members composing any society becomes a unity. *Fourthly*, the means by which a society attains its end are prescribed by laws set down by some ruling authority, and so we say that the members are *bound* to the use of the means. We have said the end of society is reached by the adoption of a determinate common means; and since in most departments of human action there are several ways in which, or several sets of means through which an end may be attained, it follows that society cannot attain its end unless it is ruled and directed by some person or body of persons charged, first with the selection of some one determinate set of means, and secondly, with the duty of seeing that the members utilise these means. All society, therefore, presupposes a ruler of some kind with authority to legislate for and govern the members, to bind them to the use of the proper means. This authority is spoken of as the formal element in society, the members who compose the union constituting the material element. And since the set of means chosen must be one and determinate, it follows that the supreme ruler of any society must be one—either one individual, or one body of individuals ruling with a common voice. If there were two supreme authorities they would probably fix on two different sets of means, not one, for the attain-

ment of the end. There may, of course, be subordinate rulers, but these subordinate rulers will act by virtue of authority conferred on them by the supreme ruler. In every society there is one supreme ruler and one supreme authority.

The various kinds of society.

Societies are divided into the following general classes :

(1) *Perfect and imperfect societies.* The expression, "perfect society," is used in two different senses to denote (*a*) a society which is self-contained, the end of which is not contained in any other, and which is, therefore, itself not a part of, or subordinated to, any other natural society ; (*b*) a society which is self-sufficing, *i.e.* is endowed with all the means necessary for the attaining of its own end, and is on that account not dependent on other societies.* The second is the more common meaning and is the meaning which will be followed in the present work. By an imperfect society, on the other hand, we shall understand one that is not, out of its own resources, capable of attaining its end. The State is an example of a perfect society. An insurance society is imperfect—without the State it could not even exist.

(2) Societies in respect of their origin are either *natural* or *positive*, according as they depend on natural law, being necessary for men from the very nature of man, or on positive law or positive agreement of some kind, not being necessities of nature.

(3) In respect of their extent societies are divided into *universal* and *particular*, according as they include all men or only a special race, community, or body of men. What is known as "human society" generally includes the whole race as directed by the Supreme

* The second is really contained in the first ; a society which is self-contained is also self-sufficing.

Ruler of the universe to man's final end. Each State is a particular society in the sense explained.

(4) In respect of the relationship of the members, societies are either *equal* or *unequal*. In equal societies all the members have equal rights, powers and duties. In unequal societies some members have special powers and rights not shared by the others.*

THE FAMILY

The family is a *society* consisting of father, mother, and children. In a wider sense of the word it includes all blood-relationships. This is the sense in which the word was used in ancient times. In the present chapter, however, the term will be used in its restricted and modern sense only.

The family is a *natural* society because it is necessary for the continuance of the race, and nature intends that the race should be continued. The family is necessary for the continuance of the race because the child cannot rear itself; it has to be brought up by others; and the provision made by nature for attaining this end consists, as we shall see later, in the marriage of the parents and the subjection of the children to their parents. But this double tie of parent to parent and of parent to child originating in natural necessity is cemented by certain *natural* subjective impulses, such as the love of parent for parent, of parent for child, and of child for parent. And, therefore, the family is natural in the fullest measure, since the ties that bind the parts together are all from nature.

The *end* of this natural society of the family is the good of the child, first, its existence, second, its rearing. The family life, of course, is not able to provide everything required for the child. The State provides many

* In all societies the ruler is possessed of special rights. In this sense all societies are unequal. But an unequal society in the technical sense given above is one in which even the subjects are unequal.

things. But the family provides at least the things necessary for the daily needs. Hence Aristotle's definition of the family—a society established by nature for the supply of men's every-day wants.

The efficient *cause* of the family is to be found in the contract of marriage. Through marriage binding the parents together in an enduring union, the family is brought into existence and maintained in existence. It is the conditions and terms of the marriage-contract that make the family what it is, and bind the lives of father and mother into one life, and that bind both together to the child. It is natural, therefore, that our discussion on the family should centre round the question of marriage on which the family is founded and by which its character is determined. To this question we shall devote the remainder of the present chapter and the chapter to follow.

On Marriage

Marriage may be considered in its two-fold aspect of the matrimonial state, and the contractual act whereby that state is begun. We shall here consider marriage in its first sense only, and as such it is defined—*a stable union of persons of opposite sexes, made under contract, with a view principally to the birth and rearing of children.* In this definition are contained the bare essentials of marriage, *i.e.* the elements that are required not for marriage at its best, but for marriage simply. It represents the least number of conditions required both in regard to the union itself, and the purpose to which the union is directed, in order that such union may be accounted a marriage.

These conditions are, *first*, there must be a union of persons of opposite sexes. Whether this union is necessarily of one man and one woman, or whether marriage allows of a plurality of wives or husbands is a question which we shall consider later in delineating

the properties of marriage. Our present contention which will scarcely be regarded as open to question, for it is defined in the very end of marriage, viz. the birth of children, is that marriage is a union of persons of opposite sexes. *Secondly*, marriage is a *stable* union. A mere momentary association of persons of opposite sex even for the purpose of bringing children into existence would not constitute a marriage. The marriage union must be stable, *i.e.* it must have such a degree of permanence as is required by the end to which the marriage union is directed. It must last, therefore, *at least*, as long as is required for the birth and rearing of children. What precisely is the degree of permanence required for marriage, whether it involves life-long permanence, *i.e.* indissolubility, or whether a shorter period suffices, will be treated in the following chapter. *Thirdly*, the permanence or stability of the marriage state must be provided for by *contract*. Merely to remain together from day to day, the parties holding themselves free to separate at any moment, would, as a union, be quite accidental, and would not possess the firmness or stability required for the marriage union. *Fourthly*, the chief *aim* of marriage is the birth and rearing of children. We speak here of nature's purpose only. It is as means to the birth and rearing of children that nature has established a difference of the sexes, and that marriage as a natural institution exists at all. It is, therefore, the primary natural end of marriage. But granted this primary purpose, then other and very important secondary purposes, to be enumerated in the following paragraph, take their place under the primary as natural ends of marriage.

THE ENDS OF MARRIAGE

Individual persons marry from a great variety of motives—some for money, some for position, some for love. These individual motives are not the object of

our discussion here. They are nothing more than subjective accidental ends, and are beside the essential purposes of marriage. What we are here examining is nature's purpose, the purpose of marriage as a natural institution, or what we may speak of as its objective end. Now, as we have just seen, the chief natural end of marriage consists in the birth and rearing of children (*bonum prolis*). First, in the birth of children. It is for this end that a difference has been set up in the sexes. There is no relationship in the sexual life that does not finally lead up in nature's scheme to this essential end—the birth of children. But marriage also includes, as part of its essential end, the rearing of children. For the birth of children a brief association of the sexes is all that is required. But the rearing of children requires that enduring union of father and mother which we speak of as marriage. And this requirement is a requirement of nature itself, for nature aims not at the mere momentary existence of children but at their continued existence and their development, and for these the child requires the joint support and care of both its parents. This we shall show in our discussion on the necessity of marriage.

But, granted this primary end, nature also, as we have already said, contemplates other secondary ends, which concern not the good of the child but the good of the parents themselves (*bonum conjugum*) and which are to be regarded as forming an important part of the natural purpose of marriage. These secondary ends all consist in the mutual supplying of those things in which the sexes naturally supplement each other, both on the physical and the psychical side of their respective natures. In the first place marriage provides for the satisfaction of certain sense appetites, not in a lawless manner, but under the conditions required by human reason. Secondly, each requires the other as a help and support in life. In the physical order each requires the other because the work which each is physically

fitted by nature to perform is different. In the mental and moral sphere their need of each other is even greater still. The perfections, virtues, refinements, the affections and sympathies even, of womankind are not those of men. Marriage provides for the perfect blending of these two sets of tendencies and capacities, in one full human life. It is this bestowal of the gifts naturally proper to each upon the other (*mutuum obsequium sibi a conjugibus in rebus domesticis impensum* *) that constitutes what we have spoken of as the secondary end of marriage.

THE NECESSITY OF MARRIAGE

When we say that marriage is necessary we do not mean that it is necessary that every person should enter the married state. Under normal conditions, *i.e.* as long as there is no danger of the race becoming extinct any man may lawfully abstain from marriage. Marriage is a duty that binds the race as such and not the individual as such, for its chief end is the racial and not the individual good. Now just as no man can live by getting other people to eat for him, so the essentials of the individual good are only to be obtained by the individual's own work or co-operation. But the continuance of the race, just like any other racial good, such as advance in medicine and the arts, requires, not the co-operation of each individual, but only of a certain number sufficient for the purpose.† Marriage, therefore, is not necessary

* "S. Theol. Suppl." 3 partis, Q.XLI. Art. 1. In Q. LXV. Art. 1. St. Thomas also speaks of these secondary ends of marriage as *fides* or *bonum fidei*.

† The difficulty suggests itself—if nature has supplied to every person the faculty of propagation, how is it that not all men are under an obligation to help in the continuance of the race. The answer is that the mere possession of a faculty imposes no *law* or *duty* of its exercise on any individual, but only the *right* to exercise it. If men were under a duty to exercise every capacity supplied to them by nature then every man with a memory for dates would be bound to study history, and every man with an ear for music would be bound to become a musician, and most men would be bound to cultivate every profession, with what results both to the individual

in the sense that every person should marry, but it is a natural necessity for those who wish to have and to bring up children,* for in the economy of nature this is the necessary means for obtaining that end. As we shall see presently, the child is not provided for as nature requires by any mere momentary association of the sexes but only by a stable union; and such a stable union of the sexes is what we speak of as marriage.

Now, that mere momentary co-habitation, or co-habitation depending for its duration on affection or fancy are not sufficient, on the contrary, that stability of union, as determined by certain inherent laws of marriage, is necessary, will be evident from what we have already said on the ends of marriage.

In nature's plan the first and fundamental end of the sexual relation is the child. It is for this end that the sexes exist, and this is the *natural* issue of their union. In this matter nature's design may indeed

and the professions can be readily imagined. In all this matter the economy of nature is very simple indeed. She provides every person with the full complement of the natural faculties, though not all share them in the same degree, and she leaves it to each to determine along what line he will develop himself and help to promote the common good. Except, therefore, in regard to those things that are necessary for the individual life and which can only be attained by the act of the same individual, nature imposes no law on individuals of exercising any special activity such, for instance, as that of propagation. On the contrary, the racial good is in many cases more effectively promoted, and in a higher way, through abstention from marriage on the part of some, as when men remain bachelors in order to cultivate science or from motives of patriotism or in order to become apostles to others. "He," says Bacon, "that hath wife and children hath given hostages to fortune, for they are impediments to great enterprises." And again, "a single life doth well with churchmen, for charity will hardly water the ground where it must first fill up a pool."—*Essays*.

* It is equally necessary for those who take those means which, whatever may be the feelings actuating the individuals, by nature are intended to end in the birth of children. And this obligation holds, even though nature's aim should be frustrated by human ingenuity or by some accident. An act which is primarily intended by nature for the attainment of a certain end should not be performed under conditions which oppose this end. And since the end intended by nature in the use of the sexual faculty is the birth and rearing of children the use of that faculty is allowed to those only who are married and are, therefore, in the condition required by nature for the joint rearing of the child. See ch. II. of present vol. p. 63.

sometimes be impeded, either by human contrivance or by natural defect, but about the character of nature's design there is no room for doubt. The whole economy of nature in all that relates to the division of the sexes is meant to lead on finally to the child.

Now our proof that marriage is necessary in the interest of the child will naturally divide itself into three parts. It is necessary to show first (*a*), that the child, unlike some animals, is not in a position to live or develop from itself; secondly (*b*), that the duty of caring for the child devolves essentially on the parents by natural law; and thirdly (*c*), that this duty devolves on both the parents.

(*a*) It is quite obvious that the child if left to itself in the first years of its existence must simply perish. For continuance in life it depends altogether on the ministrations of others. From itself it can obtain neither food nor clothing or any other thing necessary for its life. And if the ministrations of others are necessary for the life, so also they are necessary for the development of the child. We are speaking here, not of those higher stages of human development which go to make up what is known as the higher or civilised life, and for which, as we shall show later on, much more is required than mere stability of union between man and woman, but merely of those simpler attainments which might legitimately be expected of the human race at any period of its development, and even these, we claim, the child is not capable of reaching by its own exertions. Even after the first couple of years of its life have passed away, during which the child is utterly helpless and dependent on others for its life, the child is still dependent on others for its growth and development, both in the physical and the mental order. A child of seven or eight years is in no condition to procure a living for itself, whilst the degree of development, mental and moral, attained at that age is not much higher than the level of ordinary animal perfection, and, such as it is,

it would quickly be lost again were the child to be abandoned to its own resources.

These things will hardly be called in question by any sensible person, for they are obvious truths based upon ordinary reason and experience. But they assume a new significance and become more cogent and instructive when we go on to compare the provision which nature makes for the offspring of animals with the want of natural provision apparent in the case of the child. The young of most animals are, very early in their lives, enabled to dispense with the services of others. Their clothing is from nature ; through their natural instincts and capacities they are soon fitted to acquire the necessary food and to live and move and develop fully from themselves. The bird that is only a short while out of its nest is physically and psychically almost as perfect as ever it will or could become ; and whatever degree of perfection it may lack at that period will surely come to it later, but automatically as it were, and even without the need of its own co-operation. The child, on the other hand, even after the long period is over during which nutrition can be obtained only from another, is still only at the beginning of the period of growth and development, physical, mental, and moral. To abandon the child before it is physically mature would be equivalent almost to depriving it of food, whilst to abandon it even after physical growth is assured, and before at least the minimum degree of mental and moral training has been attained, would be to leave the child, as a human being, stunted and deformed, as truly so as if physically it had failed to grow for want of material nourishment. The child, therefore, is not in a position to live or develop of itself, but is naturally dependent on others, even for many years after it has attained the use of reason.

(*b*) From what we have been saying it will be evident that by natural law there devolves on somebody other than the child a duty of caring for the child during a

period extending over many years. And that this natural duty devolves in the first instance and essentially on the parent will readily be admitted by any one who considers the position of the parent in regard to the child. For it is the parents who have brought the child into existence and, therefore, on the parent devolves the duty of providing those things that are necessary for its existence and for its development. A child might, indeed, for a number of reasons pass into the guardianship of another, and be nurtured and educated by that other. But it is on the parent that this duty devolves in the first instance; and even if others should take up this work, the parent must always be available, ready to aid it at any time, should the child call for his or her presence and assistance. For this is the primary and inalienable natural right of the child—to call upon those who have given it existence for aid and guidance in the infantine and, certainly, also, during the early adult period.

And in this connection it is important to remember that nature knows nothing of any other guardian for the child than its own parents. The State, for instance, it knows in other capacities as necessary for the defence of the nation or for supplying the means of social progress. But of the State as nurse of the child nature knows nothing. Nature has set up the parents as the proper owners and guardians of the child, first, in the fact that the parents are its natural causes, and secondly by the thousand and one physical and mental ties by which it has bound parent and child into one distinctive natural group. To the mother it has given milk, naturally destined for her own child, beginning, as this fount of nurture does, with the life of the child, and continuing as long as the child requires. Also, both parent and child are supplied by nature with instincts of affection, one for the other, which no other relationship can satisfy or replace. The parent, therefore, is the only guardian known to nature, and, consequently, on the parent

devolves the natural duty of rearing and caring for the child. Our argument may be thus briefly expressed: the parent is the cause of the child's existence and, therefore, is charged with caring for its welfare; the parent is supplied by nature with the essential means required for the rearing of the child, and is thus designated by nature herself as its proper and exclusive guardian.

(*c*) We now come to the third and most essential part of our discussion. For if matrimony is to be regarded as necessary by natural law it will clearly be necessary to show that the duty of caring for the child devolves *as much on the father* as on the mother—that their joint care is required during the period of their child's tutelage. Now, that the father is charged by nature to form with the mother an enduring union for the sake of their offspring will be evident from the following considerations: *first*, the father is, equally with the mother, the cause of the child's existence, and, therefore, equally with the mother he is charged by nature with the child's welfare. Moreover, since it was as one joint principle that they gave the child existence, as one joint principle they are bound to care for the child, and, therefore, their duty of caring for the child's welfare is to be fulfilled, not in *lives apart and independent*, but in a single joint life, lasting as long as the development of the child requires. The father and mother must remain together, bound to one another for their child's sake, as long as the right of the child to call to them for aid and guidance endures. *Secondly*, without the support of the father, both mother and child will under ordinary conditions find it difficult to survive; for, as we have already seen, for some time before and after the birth of her child, the mother is not in a position to secure the means of subsistence either for herself or her child. These must be supplied by another, and by what other in nature's plan except that one who is responsible both for the mother's helpless condition and the existence of the child? A mother might, of course,

through her wealth or through the aid of friends, be rendered independent of her husband and be in no actual need of his support. But these are accidental conditions and nature knows nothing of them. Nature knows of one guardian only for wife and child, viz. the father of the child, and the design of nature admits no other in his place. Besides, money and friends may fail. But whether they do or not, no accident of fortune or of condition can rid a man of his responsibility to his child and its mother.

And in this respect it will again be interesting to examine the economy of nature in regard to the male parent in the animal world, and to see how it compares with the attitude which nature assumes in regard to man. Amongst certain animal races, those, viz. in which the male parent is required for the support of offspring, nature has provided a special instinct, whereby male and female remain together until the rearing of offspring is fully accomplished. "The procreation of offspring," writes St. Thomas,* "is common to all animals. But nature inclines to this end in diverse ways in the case of different animals. For there are some animals whose young can at once secure the requisite food, or for the care of which the mother suffices; and in the case of these nature provides no period of union between male and female. In other cases both parents are required for the sustainment of the young, but for a short time only, and in these cases, *e.g.* that of some birds, the male remains with the female for a short time. But children require the care of their parents for a long time, and, therefore, the longest period of cohabitation is necessary in the case of human parents." Wherever, therefore, the aid of the male parent is required for mother or child, nature insists upon a corresponding continued union of the sexes. But the behests of nature are conveyed to each species in a way consonant with the capacities of each. Amongst

* "S. Theol." 3 partis Suppl. XLI. 1.

such animals as require the support of the male parent, nature has provided an inward natural impulse which binds the male and female irresistibly together for the required period. Man, on the other hand, is led by reason and not by instinct merely, and the requirements of nature are realised by him after the manner of a reasoned judgment. But the laws of nature as revealed by reason are as sacred and inviolable as the necessities of nature imposed by way of natural instinct. And, therefore, if a period of union between male and female is prescribed in the case of the animals whenever their young requires their common care, much more is such a union prescribed in the case of human parents, the capacities of the child being so much greater than those of the animal, whilst its power to attain the objects of these capacities without the help of its parents is so much less.

The co-operation of the father with the mother, is, therefore, necessary during the child's first years. But the obligation of the father does not cease with these first years. His guardianship in later years is as much required as that of the mother, and his powers are naturally supplementary to those of the mother. For nature has given to them very different capacities for the training of the child, and both are necessary to the child's up-bringing.

Nature, therefore, requires a stable or abiding union of the sexes, and not a mere momentary or shortlived union, or a union lasting only as long as fancy and affection direct. Any such shortlived union would constitute a betrayal of, and a gross violation of nature's requirements in regard to the child. But a stable union of the sexes for the birth and rearing of children is what we mean by matrimony ("haec autem obligatio ad commanendum feminam marito matrimonium facit.".)* And, therefore, matrimony is necessary by natural law in the interest of the child.

* 3 partis Suppl. LXV. 3.

THE CAUSES OR SPRINGS OF MARRIAGE

As we said before, in individual cases a man may marry from any cause or motive, *e.g.* to obtain money or position, or to benefit a friend. With such individual and accidental causes we have here nothing to do. Our present enquiry relates to the original, intrinsic, or natural causes of marriage or those causes which incline the generality of men to enter, *not into a mere temporary union with one of another sex*, but into that stable and binding association of the sexes which we speak of as marriage.

The chief natural cause and spring of marriage undoubtedly is to be found in the necessity of marriage for the good of the child, and, through the child, of the race. Men in general understand clearly that without marriage the child's life and welfare are not provided for, and that the race must of necessity degenerate and decay. *The good of the child* is the primary end of marriage; it will also be its chief cause and spring. By this we do not mean that the good of the child constitutes always the most prominent psychological motive of action in those about to enter the married state. What we mean is that it is the most important cause of marriage, the cause which would continue to bring about marriages even if other causes ceased to act; also it is the cause which, if marriages became perilously few, would infallibly compel the rulers of States to intervene and to issue ordinances obliging men to marry. Most men eat for the pleasure of eating and not that they may live. Yet the chief ground and cause of eating is to be found in the necessity of food for the sustainment of life. This is the ground that would remain and would still be operative even if the natural appetite for food failed for any reason. It is so with marriage. Its chief cause and spring is to be found in its chief natural end.

But, just as in the case of food, so also in the case of

marriage, nature has not trusted to logic and reason only, that is, to man's sense of the necessity of observing the natural requirements, for the fulfilment of her aims. Human life, whether of the individual or of the race, is of so great importance that nature could not entrust them to reason or our sense of duty only, whose commands men so often fail to appreciate or to heed. Accordingly, just as in the interest of the individual life, she has supplied a special appetite for food whereby eating is made a source of delight, thus securing the individual life, so also for racial continuance she has supplied other special appetites whereby marriage and the family life are made a source of delight, and has thus, independently of man's sense of duty, secured the continuance of the species.

The first and most powerful of these appetites is that of sexual desire. The second is that of human love, which is far more permanent than the impulse of sex. The third is the need of companionship which of its nature denotes a certain degree of permanence in the alliance of the parties. which need also is most easily and naturally satisfied by those whose gifts and qualities naturally supplement one another as in the case of man and woman. The fourth is the desire described by Aristotle* implanted by nature in men's hearts to leave after themselves a replica or image of themselves. This latter desire may not be prominent in all before marriage but it becomes most prominent after the child is born, in the form of an intense affection for the child as flesh of one's flesh, as, therefore, identical with, or an image of a man's own self. In this, however, the maternal instinct is stronger than the man's, as the economy of nature would lead us to expect.

Any one of these four tendencies or needs would of itself suffice to constitute a powerful natural spring leading to the formation of the marriage union *as opposed to mere passing sexual relationship*; but their chief

* "Politics," I. 2.

effectiveness lies in their cumulative force, and in the fact that the objects of these needs so easily and so naturally coalesce, the need for companionship being most naturally fulfilled by the person whom love covets for one's own, and the desire for continuance in offspring being most happily met where the image of one's self is also the image of the person loved. In the child is furnished a new sense of identity between man and woman, a sense of identity that waxes stronger as sense love wanes, and, therefore, renders the affections of the parties in later life independent of the vacillations of sense.

We should add, however, that these special psychological springs are to be regarded as secondary and subordinate only. Were men not convinced of the necessity of marriage for the child and the race, those secondary psychological springs would soon lose their effectiveness, and marriage as a stable union of the sexes would speedily disappear.

Some opinions of positivists on the ground or cause of marriage.

The space at our disposal will allow of only the briefest possible reference to the opinions of certain writers who maintain that marriage is not a necessity of nature, and that the introduction of marriage was due, not to the perceived necessity of marriage for the good of the race, but to certain other purely accidental and historical causes.

Marriage as a stable union is explained by Mr. Westermarck * as due to two causes—first, natural selection, those races that did happen to favour stable unions defeating in the struggle for existence the races which recognised momentary unions only; and secondly, the tendency "to feel some attachment to a being which has been the cause of pleasure—in this case sexual pleasure."

Another theory on the origin and cause of marriage is the view of Lord Avebury † that originally all the women of the tribe belonged to all the men, that, later, women from

* "The History of Human Marriage," p. 20.
† "Marriage Totemism and Exogamy," p. 39.

other tribes were captured and *became the property* of their captors. In this way restrictions of sexual union began to appear which restrictions finally developed into the marriage state.

A third theory is that defended by Starcke * that marriage began with the desire of men, a desire *purely economic* in character, to possess a woman or a certain number of women to help in the home, and by bringing up children to their husband to become to him a source of wealth.

Reply.—Some of these theories presuppose a period of primitive promiscuity, and the answer to them will, therefore, be given in the text-note to follow, in which that theory is considered; but in all there are certain obvious specific defects which hardly need to be pointed out. Thus the survival theory of Mr. Westermarck ignores the fact that it is only where the paternal care is necessary for offspring that the absence of such care would be a weakness making for defeat and extinction in the struggle for existence. In the case of many species of animals this care is not necessary and such animals exhibit no tendency to disappear. Marriage, therefore, is based on the necessity of the parental care of offspring. Again, Westermarck's second hypothesis of a tendency to feel attachment to a being which has been the cause of pleasure obviously ignores the operation of an opposed and much more powerful tendency, the tendency, viz. to seek out new and fresh loves, which tendency would if not corrected by reason and by public law lead on to promiscuity and not to marriage. Apparently it is some such consideration as this that has led to Mr. Westermarck's abandonment of this second part of his theory in the third edition of his work. Lord Avebury's theory of marriage by capture will be criticised later in our review of Exogamy. whilst Starcke's opinion is not regarded by scientific men as of sufficient weight to need refutation. It is wholly imaginative and unscientific. But a good general criticism of all these theories is afforded by the principle that what is *absolutely* necessary, and known *by all* to be necessary for the race at present, must always have been necessary and known to be necessary; and under such circumstances it seems quite an arbitrary and unscientific proceeding to demand any other explanation of the origin or cause of such institutions in the past than man's sense of their necessity.

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* "The Primitive Family," p. 256.

THE THEORY OF PRIMITIVE PROMISCUITY

The theory that in the beginning the human race was entirely promiscuous was at one time regarded as hardly open to serious question amongst writers on sociological subjects both in England and on the Continent. But recent investigation into the marriage system of the primitive races has proved so unfavourable to this theory that in 1907 Mr. W. H. R. Rivers, in his contribution to the series of anthropological essays presented to Dr. Tylor, was able to state with confidence that it was not now generally accepted by scientific men. "The prevailing tendency," he writes, "in anthropology is against any scheme which would derive human society from a state of promiscuity, whether complete or of that modified form to which the term group-marriage is usually applied."

Our criticism of this theory, which must necessarily be of the briefest kind, will be divided into three parts. First, a word will be necessary on the significance of the theory of primitive promiscuity in moral science; secondly, a few of the chief arguments available against the theory will be presented; and finally, we shall answer the chief arguments which have been cited in its favour.

Its ethical significance.

The theory of primitive promiscuity, even if it could be completely established, should not be regarded as disproving our doctrine of the necessity of marriage, or as proof that marriage is accidental in its origin. On the contrary, the necessity of marriage should on this supposition become clearer and more certain. Had promiscuity ever generally prevailed, its abandonment, with all the liberty and pleasure attaching to it, should itself be regarded as affording irrefragable proof that the race early realised that promiscuity was a violation of man's natural requirements, and that unless promiscuity was replaced by marriage the race must speedily decay.

Disproof of the theory.

(*a*) The necessity of some sort of stable union of the sexes in the interest of the child and, indirectly, of the race, is so obvious that it is impossible that at any time men should not have known about it; and if its necessity was widely known it is impossible that the public or social sense of the

community should not have sustained marriage as a custom or prescribed it as a tribal law.

(*b*) The present theory assumes the existence of a former legalised state of universal promiscuity continued over a very lengthy period—a state that recommended itself universally to men, and that gradually gave way under laws of development to higher and higher conditions in the sexual relations, until, finally, the condition of marriage prevailed over all. Now the condition of promiscuity is not such as would induce conditions favourable to the development of the high moral sense such as is required for marriage. If missioners find it difficult, as they do, to raise up those licentious races, among whom their apostleship lies, from a condition not of promiscuity, but of something far higher in the moral scale, how much harder would it be for a great number of promiscuous races existing in every kind of environment *to lift themselves* out of their low condition and to impose upon themselves the yoke and self-discipline of the matrimonial life. Decline in the moral consciousness of nations is found always to lead *away from*, not to, respect of the family life. The want of any moral sense in the matter of sexual relation would consequently be most unfavourable to progress towards that life. Our argument, therefore, is that since marriage has come to be a universal law of the race it cannot have sprung out of a condition of promiscuity.

(*c*) But not only does promiscuity fail to supply the conditions necessary for development, and particularly moral development, it also leads to conditions positively opposed to development of any kind; for in the first place, under promiscuity the child cannot be cared for as nature requires; and secondly, promiscuity leads to a condition very unfavourable to fertility. Under ordinary circumstances without the help of the father, both mother and child must find it difficult to obtain the necessaries of life. But amongst primitive races these necessities it would be well-nigh impossible to obtain. For it must be remembered that in the period now under discussion the necessaries of life were obtainable only from the chase; and mothers and women generally were forbidden to join in the chase even if they were in a condition to do so. "Everywhere," writes Westermarck,* "the chase devolves on the man, it being a rare exception among savage peoples for a woman to engage in it. Under such conditions a family consisting of mother and young only would probably have succumbed." Secondly,

* "The History of Human Marriage," p. 39.

although promiscuity will not entirely prevent the birth of children, it is a well known and established conclusion of science and of experience that promiscuity leads to "a pathological condition very unfavourable to fecundity." Even in the case of ordinary races, therefore, anything even remotely approaching a condition of promiscuity would tend to the extinction of the race, but extinction would be inevitable in the case of belligerent savages to whom survival in the struggle for existence is possible only under conditions favourable to increase of the race. It is clear, therefore, that if promiscuity ever prevailed universally, the tendency must have been, not to development, but to further degeneracy and decay.

(*d*) Even if, physically, promiscuity were compatible with the continued existence and development of the race, the psychic nature of man, and particularly of the savage, is such as would render the continuance of such a condition impossible even for a brief period. For the nearer the savage approaches the primitive condition the stronger becomes the passion of jealousy, until finally, at the most primitive stage, all ordinary communication between a woman and the rest of the world is almost wholly forbidden. Thus, amongst the primitive tribes of Australia, according to Westermarck,* a woman is "not allowed to converse or have any relation whatever with any adult male save her husband. Even with a grown-up brother she is forbidden to exchange a word." Again, the severest penalties are provided even by the poorest races for unfaithfulness on the part of a wife, whilst the most extraordinary precautions are resorted to in order to ensure her fidelity. These precautions and proprieties are hardly to be regarded as compatible with the prevalence amongst these peoples of promiscuity.†

(*e*) Finally, we appeal to the now certain fact that marriage is accepted not only amongst all civilised and half-civilised, but also amongst the least developed races, that by them it is regarded as the necessary and normal means for the continuance of the race, and that, as already said, the nearer we come to what anthropologists speak of as the primitive stock the more stringent do the marriage laws become. We do not, of course, maintain that amongst savages marriage always exhibits the same perfection that it does with us.

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* *op. cit.* p. 117.

† For similar precautions in the case of the Aryan peoples see Schrader, "Prehistoric Antiquities of the Aryan Peoples," p. 391.

Some peoples, for instance, favour polygynous marriages. But all races recognise the need of a stable union of the parents, and not only for as long as offspring requires but even for a longer period. We do not for a moment deny the possibility of promiscuity amongst certain races. Under certain conditions a nation or tribe might sink to any depths. Even St. Thomas Aquinas declared himself willing to accept Cicero's statement as to the existence of promiscuous peoples, remarking that it is not everybody that observes the moral law. But actual investigation has now rendered the universal existence of marriage, even amongst the very lowest races, a practical certainty, so that it is now difficult to think that promiscuity obtains as a legalised or accepted system amongst any people. "Where marriage," writes Ratzel,* "has been supposed to be absent, even amongst the most promiscuous nomads of the forest and desert, its existence has sooner or later been in every case established." For a full account of the marriage laws and institutions of the primitive races we can here only refer our reader to Mr. Westermarck's work already quoted. Not only does he succeed in proving that marriage is universal amongst these primitive tribes, but also that even the most primitive often exhibit a more rigid adherence to the marriage laws, as they understand these laws, than is the case with many civilised peoples.

Twenty or more years ago many instances were confidently quoted by men of the school of Lord Avebury, of peoples amongst whom no trace of marriage existed. More recent investigation has in every case dispelled these early conclusions. We quote, as an instance, the case of the Andaman Islanders who, until Mr. Man's investigations, were believed to be promiscuous but were by him proved to be not only not promiscuous but even strictly monogynous. The general result of these investigations has been, as Mr. Rivers says, most unfavourable to any theory of original promiscuity. "The prevailing tendency in Anthropology is against any scheme which would derive human society from a state of promiscuity."

The attempted proofs.

The arguments developed by various writers in favour of the theory of primitive promiscuity are of two kinds, direct and indirect. The direct arguments are an attempt to

* "Völkerkunde" (English Translation), I. 114.

establish from history and positive observation the existence of certain promiscuous races within the historic period, the inference being that these races lead us back to a more distant pre-historic period, when all races must have been promiscuous. The indirect arguments consist in an appeal to certain features in the life of certain savage races which are not now promiscuous, which features, however, it is claimed, are clearly survivals from a former period when promiscuity must have prevailed amongst them.

The direct proof.—The present argument need not detain us long, since already it is largely discounted amongst scientific men. The argument is partly based on the testimony of ancient writers such as Herodotus and Pliny who make certain very confident references to distant contemporaneous peoples supposed to be promiscuous. But these testimonies are not now accounted as of very high authority, since these ancient writers had not at their disposal the equipment required for serious investigation into the habits and laws of barbarous peoples. More important is the appeal made to the testimonies of modern travellers who quote many instances of peoples living quite promiscuously and apparently knowing nothing of the marriage institution. The Bushmen of Africa, for instance, are quoted by Lord Avebury as entirely promiscuous; also the Andaman Islanders already mentioned, the inhabitants of Borneo, and many others. The list is a long one and we can scarcely be expected to take up each individual instance quoted in support of the present theory. Nor is it necessary that we should do so. It will be quite sufficient to repeat our statement supported by such an authority as Mr. Rivers that the current of scientific opinion is no longer in the direction of Lord Avebury's theory, and that the cases on which that view was founded are being slowly but surely disproved as opportunities for closer investigation grow and the methods improve. For instance, there is the case of the Andaman Islanders, which has already been mentioned, and in regard to which we can only refer our reader to Mr. Man's papers on the subject.* These papers show that not only were the Andaman Islanders not promiscuous, but that they were monogynous, that divorce was unknown amongst them, and that fidelity unto death was not the exception but the rule. Again, the appeal of Lord Avebury

* "Journal of the Anthropological Institute," 1882–3. See present volume, p. 37.

to the various African races, an appeal based for the most part on the flying visits of travellers, has been completely disproved by the more serious work of recent scientific investigators. "It is certain," writes M. Le Roy,* "that nowhere in Africa do we see any present-day traces of this promiscuity. . . . The more one descends amongst the populations of most primitive general aspect, such as the Pygmies and the San, the more the family appears precisely as the fundamental basis, necessary and indisputable of primitive society." The other cases cited by Lord Avebury are of the same character, and are slowly yielding ground before the continued pressure of serious scientific investigation.

The indirect proofs.—Of more importance than the direct are the indirect proofs appealed to in support of this theory of promiscuity, since the appeal here is not to the testimony of ill-informed travellers, but to admitted facts. It is only the interpretation of those facts and the inferences based upon them that will be here called in question.

(*a*) The first of these indirect proofs is based on the now generally admitted fact that amongst certain savage tribes descent is through the mother.† The only explanation to be found for such a fact is, according to McLennan, that afforded by the theory of promiscuity, descent through females connoting uncertain paternity, and uncertain paternity, when general, being possible only under promiscuity.

Reply.—Promiscuity is neither necessary nor adequate as an explanation of the matriarchal system. It is not necessary because a much more natural explanation is furnished by such facts as the following—that the child is more closely related to the mother than to the father; that in the polygynous family each mother constituted with her children a special group, the children of which group could only be distinguished by their connection with their mother; also that some of the women were privileged over others, and descent should be through the mother if these privileges were to be inherited. Another explanation is that given by M. Le Roy ‡ that it was only in descent through his sister or other blood relation that a chief could secure a successor

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* "La Religion des Primitifs," p. 95.

† This discovery was first made public by a certain Swiss jurist, Dr. Bachofen, in 1861, in his able work, "Das Mutterrecht." The discovery was immediately utilised in support of the theory of promiscuity.

‡ *op. cit.* p. 104.

of the same blood as his own. The children of his own wives might not be his own.* Promiscuity, therefore, is not necessary as an explanation of this system.

Neither is promiscuity *sufficient* as an explanation of matriarchate, because, as Spencer points out, the matriarchal system is found to exist where not only is there no trace of promiscuity but "where there is neither polyandry now, nor any sign of its past existence." Matriarchate, therefore, must be due to some other cause than promiscuity and uncertain paternity.†

(*b*) An appeal in proof of promiscuity is made in the second place to certain alleged present instances of the "group marriage" system amongst primitive races. It is claimed by Messrs. Spencer and Gillen ‡ that amongst the Urabunna tribe of Central Australia, group marriage exists at the present day, "a group of men of a certain designation having, not nominally, but in actual reality and under normal conditions, marital relations with a group of women of another special designation." "Individual marriage does not exist," it is asserted, "amongst this tribe, either in name or in practice." The inference is that these group marriages are a survival from a former period in the development of the race, that marriage is a development out of promiscuity, the successive steps in the evolutionary series being from sexual relations of all with all, to those of a group with a group, and final to the relation of one with one, which is our present system.

Reply.—Much light has of late been thrown on the marital system obtaining amongst the Urabunna tribe, and the facts revealed are not in harmony with the theory propounded by Messrs. Spencer and Gillen. It is now certain that the Urabunna tribe are not an instance of group marriage. They are an instance of monogynous marriage amongst a

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* This does not mean that amongst such peoples the moral laws were never observed in the relations of the sexes. It means that violations of the law were always possible, and that, therefore, even in a highly moral race the chief could not be absolutely certain of the blood of the child, whereas identity of blood was absolutely necessary for succession.

Giddings maintains ("Principles of Sociology," p. 266) that the matriarchal system was a result of economic conditions exclusively.

† Our reasoning here is fully borne out by E. S. Hartland in his work on "Primitive Paternity," vol. I. 325.

‡ "Northern Tribes of Central Australia." Also "Native Tribes of Central Australia" (see p. 110).

people who entertain very loose opinions about the rights of a husband over his wife. In the Urabunna tribe each woman is really wife to one man only, who is her husband in strictness (Nupa), but who regards himself as entitled by his position as husband to hand his wife over, not to any man, but to any one man of a particular group who are spoken of as Piranguru to this woman. These men have all a claim to her, but this claim can only be exercised with the consent of her real husband—her Nupa. The evidences, then, all go to show that, so far from the Urabunna custom constituting a step in the evolutionary series upwards from promiscuity to monogyny, it is rather to be regarded as a degradation from a former system of pure monogyny, caused probably by some general process of moral decadence within the tribe, coupled, as Mr. Thomas suggests,* with the difficulty, so often experienced in Australia, of obtaining wives. A similar condition of things obtains, we are told by Mr. Howitt,† amongst the Dieri tribe of South East Australia. There an individual girl is betrothed as special wife (Tippa-malku) to one man; but she can be handed over by her Tippa-malku husband, *i.e.* her true husband, to some one (Pirrauru) of a particular group of a definite designation. It is not, therefore, an instance of *group marriage* proper. The Dieri custom is nothing more than what Mr. Lang calls it—a "legalised paramourship." "Pirrauru," he tells us,‡ "is no more a survival of, and a proof of, primitive promiscuity than is the legalised incest of ancient Egypt and ancient Peru."

(*c*) Thirdly, it is asserted that amongst certain peoples who do not now practise group marriage, certain survivals of that system still remain in the mode of address obtaining amongst the members of the tribe. We are thus, it is maintained, brought back to that remote period when group marriage itself was evolved out of the promiscuous condition. We are told, for instance, by Messrs. Fison and Howitt § that the Kamilaroi people of South Australia are divided into a certain number of groups, groups of men and

* "Kinship Organisation and Group Marriage in Australia," by N. W. Thomas, p. 138.

† "The Native Tribes of S.E. Australia."

‡ Article, "The Family," in *Ency. Britt.*

§ "Kamilaroi and Kurnai." The four groups referred to in the text are Ipai (the men) and Ipatha (the women): Kubi and Kubitha; Muri and Matha; Kumba and Butha. Ipai marries Kubitha, Kubi marries Ipatha; Muri marries Butha, Kumbu marries Matha,

groups of women, that each man of a particular group refers to each woman of a certain other group, that, viz. into which he can marry, as "wife," the inference being, that though now each man is not *indivdually* married to all the women of the group, he is married to all by *organic law*, and that formerly he was individually married to all. The present mode of address, therefore, is only a survival from the ancient practice of group marriage, which itself succeeded promiscuity.

Reply.—The simplest explanation of these relationships is that they are relationships of nomenclature only. It is true that the men of a particular group can marry only into another definite group of women. What could be more natural than that the women of that group should be designated by a special name distinguishing them from all other groups and defining their special relation to the men in question. Naturally, since each woman of that group, and that alone, is potentially the wife of any individual of a certain man group, she would be spoken of as wife by that group. But this explanation is not of the nature of an hypothesis merely. It is based upon what is definitely known of the nomenclature adopted by certain other tribes, as will now be shown.

(*d*) We now come to the final argument quoted in favour of the theory of primitive promiscuity that, viz. afforded by the well-known classificatory systems of relationship described by Mr. Lewis Morgan * as obtaining amongst a large number of savage peoples. These systems are indeed very varied, but there are evidences that they are all variants of a single original classificatory system. One example will suffice to describe the phenomenon in question. Amongst the Hawaians, Kingsmill Islanders, and Maoris, the people of the tribe are classified into five categories, *according to generation.* One's brothers, sisters, cousins, *i.e.* all of one's own generation, are spoken of as brothers and sisters. One's father, mother, and *their* brothers, sisters, cousins, etc. are spoken of as parent. The generation beyond those are all spoken of as grand-parent. One's sons, daughters, and *their* cousins, etc. are spoken of as one's children, the next generation as one's grand-children. The system, Morgan

* In his works, "Ancient Society" and "Systems of Consanguinity and Affinity of the Human Family." We have to apologise for the unavoidable brevity of our reference to Mr. Morgan's lengthy and able volumes.

maintains, can only be explained as a survival from a period when all the men of one generation were the husbands of all the women of the same, one consequence of which would be uncertain paternity. Each father, not knowing his own children, would simply describe all the children of the next generation as his children.

Reply.—Morgan's explanation of the classificatory system is not only not justified by the premises and exceedingly far-fetched, but it does not even harmonise with the premises. It is not demanded by the premises because the facts can be explained more rationally on other grounds. The classificatory system is simply one of nomenclature; and the term parent, child and grand-child denote generations merely, not relationships.* To age, amongst savage nations, there attaches a social importance far greater than amongst civilised people, and so it is natural that the tribe should be marked off primarily into groups according to generation. Indeed, this same form of address obtains to a certain extent even amongst civilised peoples, who certainly are not given to group marriages, and with them certainly it is meant to denote generations only. In Spain a brother's grandson is called grandson.† In Bulgaria and Russia a father's father's brother is known as grandfather. To postulate a period of group-marriages and consequent uncertain paternity in order to explain a similar phenomenon in the case of savage tribes seems not a little absurd.

But the hypothesis here is not only unnecessary, it also contravenes the facts to be explained. For, granted, for the sake of argument, that the children of one generation spoke of all the men of the preceding as their fathers on the ground that any of them might be their father, they certainly could not speak of all the women of that generation as their mother on the ground that any of them might be their mother. If paternity is uncertain maternity cannot be, and yet, the individuals of each generation speak of the women of the preceding generation as their parents. It is evident, therefore, that uncertain parentage and the group-marriage system which it implies cannot be accepted as an explanation of the present nomenclature whatever else may be.

In conclusion we may be permitted to remark that arguments based on supposed survivals are always dangerous,

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* See Starcke, "The Primitive Family," p. 207.

† Westermarck, *op. cit.* p. 90.

but in connection with the question of marriage they have been pushed to ridiculous extremes. "Nowhere" (else), writes Howard,* than in connection with this province "can there be found rasher inference and more sweeping generalisations from inadequate data." The evidence adduced affords not the slightest ground for belief in the existence of a former general period of group marriages, much less of promiscuity. "It is not, of course, impossible," writes Westermarck, † "that among some peoples intercourse between the sexes may have been almost promiscuous. But there is not a shred of genuine evidence for the notion that promiscuity ever formed a general stage in the social history of mankind." Indeed, our only wonder is how in a sphere of conduct in which the incentives to evil are so many and powerful, and deterioration is so easy, these benighted children of Adam should have so long maintained the high standard of practice which characterises most primitive races in reference to marriage, and, how, whatever their practices might be before marriage, they have always, at least in theory and in their laws, rated the purity of the hearth as the highest and most sacred requirement of their tribal life.

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* "Hist. of Mat. Institutions," I. 9.
† *op. cit.* p. 133.

CHAPTER XIV

THE ATTRIBUTES OF MARRIAGE

BEFORE proceeding to determine the requirements of natural law in regard to marriage it will be necessary to repeat our explanation of natural law given in the first volume of this work, and to enlarge upon it according to the requirements of the subject now in hand. By natural law in the sphere of human action is meant the necessity of taking whatever means are required for the attainment of the natural necessary ends. That some ends are natural and necessary is evident from the fact that in man there are certain recognised natural needs such as the need for life, for food, for happiness, which natural needs are all based upon the existence in man of specific natural appetites for the attainment of these ends. Every man naturally desires life, food, happiness. The things that are naturally necessary for the attainment of these ends are said to be prescribed by natural law.

Now natural laws vary in order and importance according to the importance of the ends which they severally concern. Life, for instance, is more important than education, and, therefore, the need of life and the law prescribing its maintenance are of more importance than the need of education and the laws resting on that need. Again, even a single end like life may give rise to different kinds of laws since some things are absolutely essential to life itself, whilst other things are necessary only for the better or healthier life. To eat is necessary for life; to eat good food and at the proper times and in right quantities is necessary for the better and healthier life. These differences in degree of importance in the

natural ends give rise to a distinction in laws which is of the greatest importance in Ethical science, viz. *primary* and *secondary* laws. Speaking in a very general way we may say that the primary laws are those laws which prescribe the things necessary for the most essential ends, the secondary laws prescribe what is necessary for the less important ends. But these definitions will later need modification, and a much clearer view of what they severally imply will be gained from our treatment of the subject at present in hands, viz. the attributes of marriage, a subject which we now go on to discuss.

Already we have distinguished the ends of marriage into primary and secondary. The primary and immediate end of marriage is the birth and rearing of children. The secondary and subordinate end consists in the happiness and good of the parents. Those laws that provide for the attainment of the primary end will naturally be of more consequence than those that concern the secondary end, and this difference in importance will be fully allowed for in the division of laws * which is presently to be made.

But even in regard to the primary end there is room for differences in the natural laws. For not everything in the primary end itself is of the same importance with the rest. The essentials of the primary end are more important than its higher perfections. It is more important to rear the child than to rear it in the best and most perfect way, as, for instance, by a good education and by surrounding it with all that makes for natural refinement. The substance must come before the perfections of the substance, else there is nothing to perfect. Now some things are so necessary in the relations of the sexes that without them the primary end of marriage cannot be attained even in its bare essentials, or at least the attaining of these essentials *is very much impeded.*

* The division of primary and secondary ends is not quite coextensive with primary and secondary laws as will presently be seen.

Other things are necessary only for the refinements, the perfections of the primary end.

We have, then, three degrees of necessity falling under the natural law. First, there are those means that are necessary for the attainment of the primary end in its bare essentials. Without these the designs of nature cannot be attained at all or are much impeded. The omission of those means is directly opposed to the essentials of the primary end. Then, secondly, there are those means that are necessary for the attainment of the primary end *in its perfection.* Thirdly, there are means that are necessary for the attainment of the secondary ends. The first class of means is said to be necessary for the "very being" of the thing; the second and third class are said to be necessary for its better or more perfect or more developed being, and by the better being in this connection we mean to signify not the better being prescribed by religion or by positive law, but the better being contemplated by nature herself, or what Prof. Bosanquet calls,* "the flower and crown of the possibilities inherent in the natural conditions of a thing." Without the first of these three sets of means nature's purposes would remain wholly unfulfilled; without the second and third, though the fundamental essentials of the natural law are not opposed, the level of excellence attained falls very far short of nature's standard.

As in connection with the natural law generally, so also in regard to marriage, we have to distinguish two different classes of law or precept. The primary laws, as we saw, deal with what is of prime importance; they deal, therefore, with the essentials of the primary end, prescribing those things without which the essentials of the primary end cannot be attained, and forbidding those things which oppose the essentials of the primary end, that is, those things which either render the essentials

* "Philosophical Theory of the State," p. 32.

unattainable or seriously impede their attainment.* The secondary laws deal with what is necessary for the things of subordinate or lesser importance; they prescribe, therefore, what is necessary for the attainment of the secondary ends and for the full and perfect accomplishment of the primary end. Applying these distinctions to marriage—anything in the marriage union which prevents or seriously, and *from its nature*, impedes the birth of children or the essentials of rearing † is forbidden by the primary principles of the natural law; anything in the marriage union which of its nature opposes the more perfect rearing of the child or the welfare of the parents is forbidden by the secondary principles of the natural law.

This distinction is of the greatest importance in determining validity. In a system where natural law alone obtains, any union of the sexes which is capable of fulfilling the primary laws of nature in regard to marriage is to be considered a genuine marriage. A union which violates these primary laws is no marriage, but only simple concubinage. But unions that merely fail to accord with the secondary laws of nature in either of the two senses mentioned, though possible (in a system where only natural law obtains), in as much as they fulfil the bare essentials of nature, are yet to be regarded as forbidden by nature, as falling below the standard which nature prescribes. "Man and woman," writes Aristotle,‡ "do not form a marriage for the sake of life (only) but for the sake of a perfect (or better) life." Under no circumstances could nature tolerate those unions that violate the primary laws; they are an offence against nature in its deepest and most fundamental

* "S. Theol," 3 partis suppl. Q. LXV. Art. 1 ad 8; also Q. LIV. Art. 3. These primary laws obviously also forbid anything involving a reversal of the essential relation of subjection of child to parent, *e.g.* the marriage of parent and child, a relation which would demand equality, not subjection.

† This rearing must be in the way prescribed by nature, *i.e.* rearing by father and mother together. See Q. LXV. Art. 1 ad 8.

‡ "Econ." I. c. 3, 1 43b, 18.

requirement. Only in very special cases (we still suppose that revealed religion does not intervene) could unions that violate the secondary natural principles be allowed, where, viz. if they are not tolerated greater evils will follow.

The Unity of Marriage

By the unity of marriage is meant the marriage of one man with one woman; or, that a man cannot simultaneously have more than one wife, or a woman more than one husband. In all civilised countries marriage is understood to be a union of one man with one woman, and to attempt to contract a new marriage before the expiration of the first is a crime punishable by law. This law prescribing unity of marriage, though largely founded on the requirements of the Christian religion, is not to be regarded as wholly grounded on religion, for the unity of marriage is also a requirement of nature, and both reason and experience have long since demonstrated its necessity. But the question for us is how unity is to be regarded as a *natural* attribute of marriage, and in what sense, and on what titles, and whether in a system where revealed religion does not intervene, a plurality of wives or husbands might ever be allowed. In answering this question we shall have to consider the unity of matrimony from its two sides, that of the woman and that of the man. We shall first inquire whether and how far *monogyny* or the possession of one wife only is prescribed by natural law, then whether *monandry* or the possession of one husband only is of natural law.

*Monogyny versus Polygyny.**

That monogyny is not absolutely necessary for the obtaining of the primary end of marriage, *i.e.* the birth

* By derivation the words monogamy, bigamy, polygamy relate neither to husbands nor to wives in particular but to either indifferently. "Polygyny" is now the term most frequently used to denote, as its

and rearing of children, is a proposition that will easily be accepted by any thinking person, and, therefore, it follows that monogyny is not required by the primary laws of nature. Not only can children be born under the polygynous system but that system places no hindrance to their birth. They can be born to each mother, and each mother's family may be numerically as large as if her union with her husband were of the monogynous type. The rearing of the children, too, so far as the essentials of rearing are concerned, is possible under this polygynous system. The child can be fed and nurtured, and to some extent instructed also, by both its parents. Polygynous marriages, therefore, under the *law of nature* * may be true and valid marriages, and, therefore, their more or less wide-extended occurrence is to be expected amongst those races that are satisfied with the minimum requirements of nature, races that have no care for that higher or more developed life which is attainable even within the order of nature.

But the efficacy of the polygynous family stops short at these primary and fundamental requirements of natural law. The birth of children is no doubt secured as perfectly under this system as in the monogynous family, but the rearing of the children, which, as we saw, is also a part of the primary end of marriage, can be realised in its essentials only, whilst most of the secondary ends of marriage can scarcely be attained at all.

For a reason which will presently be explained, we propose to consider in the first place the polygynous

derivation implies, having many wives. It seems, then, absurd to use, as Westermarck does, as the correlative of this the term "monogamy" to express the single wife-union. We, therefore, make bold in the present volume to adopt a usage which has at all events the advantage of following a uniform rule, viz. we shall use "monogyny" to signify union with one woman; "polygyny," to signify union with many women.

* *i.e.* in circumstances where only the natural law obtains, and, therefore, abstracting from the requirements of the Christian religion in regard to marriage.

union in its relation to the secondary ends of marriage —the *bonum conjugum*.* Under this term is included everything (outside the mere possession of children) that goes to make up what we speak of as matrimonial bliss as between husband and wife—the happiness possible to them in the whole sum of their connubial relations, from the simplest and most indispensable, up to the highest and most refined. Now, our contention is that in the polygynous marriage the conditions are not such as make for the happiness of husband and wife (particularly of the latter), for mutual confidence and understanding, for self-respect in the mother, or for anything that befits her dignity as a human person. In the first place there can be no *equality* between husband and wife where the husband is in a position to claim all the service and attention of the wife, whilst she can only divide the attention of her husband with many others. Now, the woman, though she may owe obedience to her husband, is, nevertheless, as a human being, his equal in every way. By nature she is directed to the same end; by nature she is endowed with the same faculties, and, therefore, she must not be treated as, in the order of nature, a means only or as inferior. In the polygynous union, on the other hand, the woman is not, and cannot be treated in any other way than as an inferior. In no way can she take her place in the family as the equal of her husband. Before her children and the world she stands in the position little better than that of the slave.

And this sense of inequality and inferiority extending over her whole life, and entering into every relation of her life, will of itself exercise a most deleterious effect on the mother, and degrade her not only in her own estimation, but also in actual fact; for its tendency will be to suppress in her every natural feeling of self-respect, and every desire for the higher things from

* The rearing of the child, which is part of the primary end, will be considered in the second place.

which the mother of the monogynous family derives so much of her dignity and her influence for good.

Secondly, where husband and wife are so unequal, *love*, and by this we mean human love, with all that differentiates it from the mere animal sexual impulse, is of necessity absent, or present in shadow only. As we said before, it is an inseparable characteristic of human love to claim the person loved wholly for oneself, to honour the person loved, and to desire a return of love equal to one's own.* In a polygynous family, it will not be necessary to show, such love is wholly impossible. In the polygynous union the wife cannot be loved as an equal, and her husband is not exclusively her own. The essential conditions and characteristics of human love are excluded by the very terms of the polygynous union, and, therefore, if affection is present at all, it can only be of the sense order, such as the brute animals entertain. It follows that in such a union all those finer and more tender kinds of love that are proper to the human kind will be left untried; the rich fields of affection that lie outside the region of mere brute sense will be left all uncultivated. In her intercourse with her husband a woman so conditioned will be wounded every day in her tenderest sensibilities. She will be a slave rather than a wife. "Polygyny," writes Westermarck, "is an offence against the feelings of woman, not only amongst highly civilised peoples, but even among the rudest savages."

Thirdly, in a polygynous family, the passion of *jealousy* must necessarily be present, with disastrous effects upon all that go to make up the polygynous household. Mother will vie with mother for a place in the affections and attentions of their common husband, and each will claim the higher functions of the household as her own.†

* Aristotle, "Nic. Eth." VIII. 6, 2; IX. 10, 5; VIII. 2, 3. The woman in this case cannot claim her husband wholly for herself, is not held in honour, cannot aspire to a love the equal of her own.

† "Communicatio plurium," writes St. Thomas, 3 partis Suppl. LXV. 1, "in uno officio causat litem."

And she will be moved, it is important to remember, to this rivalry and to defend her position in the household, not from unworthy motives only, but from a sense of her duty to herself as mother, and to her children, who in justice should not be allowed to fall into an inferior place in the household as compared with the rest. She will be moved, therefore, by her duty, to suspicion and jealousy. And this passion of jealousy will grow to more intense effect, as each woman finds herself superseded in turn by younger and newer wives, and it will communicate itself to every part of the family, or rather to the various parts of that series of competing and antagonistic families which the system of polygyny binds so closely but so artificially together. It is clear then that in the polygynous family the *bonum conjugum*, the happiness and contentment of the parents, is not to be obtained.

But it is impossible in viewing the secondary ends of matrimony to confine our attention to the effects of polygyny on husband and wife alone. For husband and wife are a part of *human society* generally, and matrimony more than any other natural institution has to do with the welfare of human society. But every one of the evils which have just been enumerated will be reflected outside the family life in that larger social environment of which families are the immediate constituent parts. For the character of society is the character of the aggregate of the units that make it up. If the family generally is divided against itself, and wanting in love, in dignity, in enthusiasm for the better things of life and for the natural ideals, the tone of human society generally will be low, its fibre weak, and instead of providing an environment suitable for development it will itself go far to hinder development both on the part of the individual and of the family.

It will now be readily understood why in our criticism of polygyny we treated of the secondary ends of matrimony in the first place and not of the primary end,

which includes not merely the birth but the rearing of children. We wanted to show how the unhappy conditions which polygyny sets up in the relations of the parents and in the social environment in which the child exists reflect themselves in the child. This we now go on to show. Apart, of course, from these reflected conditions, the rearing of children has under the polygynous system its own inherent difficulties. The children born to any one mother must almost of necessity fall to her care exclusively. The father may supply the necessities of life but he will supply nothing else. The care, the love, the forethought, the anxiety that are possible in the monogynous family will be impossible to a father whose attention is divided amongst so many groups. And what reason tells us is likely to be the result, history records as the actual universal accompaniment of the polygynous system. Where polygyny prevails, there the child falls to the care of the mother alone. And to what kind of mother is the exclusive care of the child thus unfortunately committed? To one who is left without self-respect or pride, whose position in the family grows weaker as the years pass, who stands out before her child as impotent to control or to command the love or attention of him who is the co-principle with her of the child's life. Under polygyny the child is, indeed, handicapped from the start, both on the side of its father and of its mother.

But in addition to this there are all the reflected evils of the family environment in which the child is reared. The degraded condition of the mother, the absence of home-love and understanding, the atrophy from want of exercise of all the finer human affections, the ill-assorted groups of families into which the child's lot is thrown, their perpetual and growing antagonisms, the loose and degraded condition of society formed of such groups, all these will reflect themselves in the child's life and character, and are obstacles to his perfect

rearing. It will, of course, be said that all these evils may occur even in the monogynous family. We answer: yes, but there they occur, *not as a result of monogyny*, but for some other reason, and, therefore, *per accidens*. They cannot be regarded as inherent in the monogynous system. But the results which we have been describing are inherent and necessary effects of polygynous unions, and, we may add, they would remain its characteristic and inherent effects, even though by accident and by taking precautions it might be possible to avoid them in particular cases.* The natural law is determined not by accidents and exceptions, but by general tendencies and requirements alone.

Polygyny, therefore, though in consonance with the essentials of the primary end of marriage, is opposed to the secondary ends and to the perfect attainment of the primary end. Consequently, though allowed by the primary laws of marriage, it is forbidden by the secondary laws.

Monandry versus Polyandry.

We now turn to the question of monandry and polyandry, or whether a plurality of husbands is compatible with natural law. A little consideration will make it clear that the condition of things obtaining in the polyandric union is quite different from that obtaining under polygyny. Under polygyny the secondary ends of matrimony are not obtainable; neither is the primary end obtainable in its perfection. And so polygyny was adjudged to be incompatible with the requirements of the better or more developed life. But under polygyny

* As a rule amongst savages only the rich are polygynous. Their wives might, therefore, remain partially content with their position because by their marriage they are placed above the rest of the women. Also a man, as a rule, allies himself to two or at most three wives only. But the effect of polygyny—its essential effects—are seen most clearly under polygyny "writ large," that is, where the whole of society is polygynous and *each* man has many wives; and in such a system certainly the lot of both mother and child is poor and unhappy.

the main purpose, the primary end of marriage in its essential features is quite attainable. For each child can be reared and cared for by its father and mother in joint endeavour and in the one home. Under polyandry, on the other hand, neither the primary nor the secondary ends of marriage are attainable, as will be clearly seen from the reasoning now to follow.

That the secondary ends of marriage, and the perfections of the primary end, that is, all that goes to make up the better or perfect family life, are not obtainable under polyandry, it is unnecessary to attempt to prove. The polyandric family is nothing more than a hideous and revolting union, in which neither love, nor respect, nor dignity of mother or father (particularly of the latter), nor any of the nobler qualities of soul are attainable or conceivable. The polyandric family is lower and more horrible even than promiscuity, for the polyandric family connotes not only the *power* to accomplish, but also the *right* to accomplish everything that makes promiscuity hideous. Under promiscuity a woman may escape some, at all events, of the horrors of the system. In the polyandric union she can escape nothing. In such a union it is her *duty*, if we might say so, to sink to every unspeakable depth. What need then can there be to discuss in regard to such a union the higher requirements, the perfections of soul obtainable, the refinements ensured ?

Consequently we go on to show that polyandry is opposed to the *primary* laws of nature. It is opposed to the primary laws because it is opposed to the primary end of marriage, viz. (*a*) the birth and (*b*) the rearing of children.

(*a*) That polyandry does not accord with the requirements of nature in regard to the birth of children will be evident from the following two arguments, one negative, the other positive in character.

Polyandry can form no part of nature's economy or system, since it in no way furthers nature's primary

end, *i.e.* it in no way helps to increase the race, which is the most important element in the primary end of matrimony. Within certain limits the greater the number of women possessed by a man the greater the number of children that can be born to him. But a woman cannot bear more children by having many husbands than by having one. And, therefore, polyandry, unlike polygyny, can form no part of the economy or system of nature, in regard to the propagation of the race. Nature has no use for such a union, and consequently it lies completely outside the natural order. But although the polyandric union lies completely outside the scheme of nature, it does not lie outside the reach of nature's condemnation. For if the polyandric union in no way furthers nature's purposes, it, nevertheless, offers to the parties the milieu in which the matrimonial privileges attaching to these purposes may be utilised and exercised. In other words, in the polyandric union the privileges and pleasures attaching by natural design to the propagation of the race are taken full advantage of, whilst at the same time nature is cheated of that great and important end for which alone these privileges and pleasures were devised, viz. increase of the race. Polyandry is, therefore, not only not a part of nature's scheme, or recognised by nature in any way, it is positively discountenanced and repudiated by nature as an unwarranted encroachment upon her fruits and privileges.

But the polyandric union not only in no way furthers, it actually sets up a positive impediment to the birth of children. Under polyandry the birth of children is not, indeed, to be regarded as wholly prevented, since the simultaneous conception of different children from different fathers is physiologically a possible occurrence. But such an occurrence would certainly be perilous to one or other or both the offspring, and, therefore, the polyandric union is at least to be regarded as *an impediment* to propagation, as making difficult the continuance

of the race. Besides, it is a well-known fact that a plurality of husbands tends to set up in woman an habitual inability to conceive; as Sir Henry Maine expresses it, it sets up a "pathological condition unfavourable to fecundity," * and in this way the polyandric union places not only a temporary but even an habitual impediment to propagation. Of course, to some extent it would be possible to obviate these difficulties by turning the polyandric union into a series of monandric unions each lasting for a year; but such unions would really be monandric,† not polyandric, and the only ethical question that would arise concerning them is whether a union of one man and one woman, lasting for a year only, satisfies the law of nature in regard to marriage. The polyandric union proper means the simultaneous possession of many husbands, and such union is opposed to the primary laws of nature, for of its nature it impedes the birth of children.

(*b*) But if in the polyandric union the birth of children is seriously impeded, the rearing of children *in the way required by natural law* is rendered wholly impossible. For by natural law the child should be reared by the father and mother who brought it into existence, whereas under the polyandric union no father is in a position to rear his child, since by natural necessity he is unable to know his child. And if the father cannot know his child, so the child cannot know its father; and, therefore, he is deprived of the right to call upon his father for aid and guidance, a right to which nature strictly entitles him.

Being opposed, therefore, to the primary end in its very essentials, and violating, as a consequence, the requirements of the primary laws of nature, the polyandric union is absolutely forbidden by natural law, and can in no case be sustained. St. Thomas' brief

* Dissolute women have, as a rule, no children.

† It is in this way that the polyandric races of Thibet have managed to survive. See Westermarck, *op. cit.* p. 116.

but simple exposition may now be quoted. "Unam uxorem habere plures viros est contra prima principia legis naturae, eo quod per hoc quantum ad aliquid totaliter tollitur et quantum ad aliquid impeditur bonum prolis quod est principalis matrimonii finis. In bono enim prolis intelligitur non solum procreatio sed etiam educatio; ipsa enim procreatio prolis etsi non totaliter tollitur quia contingit post impregnationem primam iterum mulierem impraegnari . . . tamen multum impeditur, quia vix potest accidere quin corruptio accidat quantum ad utrumque foetus vel quantum ad alterum; sed educatio totaliter tollitur, quia ex hoc quod una mulier plures maritos habet sequeretur incertitudo prolis respectu patris cujus cura necessaria est in educando." *

The Indissolubility of Marriage

We come now to treat of the question whether marriage is by the law of nature a terminable union or whether it is indissoluble. It is important that we should understand the exact nature of the question here under discussion. Divorce, or the breaking of marriage during the lifetime of the parties, may be of two kinds, first, *imperfect* divorce or separation *a mensa et thoro*, i.e. merely ceasing to live together, neither party being free to enter another marriage: second, *perfect* divorce or divorce *a vinculo*, i.e. the dissolution of the *marriage tie* during the lifetime of the parties, enabling either or both of them to enter a new marriage. In our present discussion we have nothing to do with imperfect, but only with perfect divorce, or divorce *a vinculo*, and our doctrine on the question whether marriage is indissoluble and excludes divorce in this sense may be stated in the two following propositions:—

I. By the primary laws of nature marriage must endure until the family is fully reared.

II. By the secondary laws of nature marriage is in-

* "S. Theol." 3 partis suppl. LXV. 1.

dissoluble, *i.e.* it must endure until the death of one of the parties.

I. The primary properties and laws of marriage are chiefly determined by its primary natural end. Anything that is indispensably required for attaining that end is required by the primary natural laws. What opposes or seriously interferes with the attainment of that end is strictly forbidden by natural law. Now, we have seen that the primary natural end of marriage is the birth and rearing of children, and, therefore, the primary principles indispensably require that marriage should last at least as long as is required for the birth and upbringing of the child, *i.e.* it should last at least until the child is able to take full care of, and to provide for itself (quosque proles ad perfectam aetatem ducatur *). This is the shortest period contemplated by natural law in regard to marriage. Let us see what its duration is, and, therefore, up to what age the marriage union binds the parents by the primary principles of the natural law.

If the only end contemplated by nature in the institution of marriage was the birth and rearing, by each man and woman, of one child, then a father and mother would have fully discharged the duties imposed upon them by the primary natural precepts by remaining together for a space of about twenty years after the birth of the child, at which age the natural period of tutelage is supposed to end. This would be the shortest period of time contemplated by nature in relation to marriage, and any sundering of the marriage tie before the end of that period would be impossible in natural law.

But it is evident that the nurture of one child does not represent the true conditions aimed at by nature in the marriage union. In the institution of marriage, nature certainly aims at the full use of the powers which she has bestowed on the sexes, she aims, that is,

* " S. Theol.", Suppl. ad 3 partem, LXVII. 2 ad 1.

at the birth not of one but of many children. Moreover, the birth of only one child does not represent the normal condition of the family, and it is by the normal conditions that the natural laws and properties of marriage are determined. After the child is born it has to be nurtured and trained by its parents, for which purpose the father and mother must stay together, as we have already said, for a space of about twenty years; now, normally it is to be expected that during that period other children will have been born, on which account the marriage union must be still further extended; it will, in fact, continue throughout the full period of fecundity, and also for the twenty additional years required for the upbringing of the last or youngest child. Thus, normally, the primary requirements of marriage will not have been met before the parents reach the very advanced age of about seventy years. And since, as we said, the laws of nature are determined, not by what is exceptional, but by what is normal and ordinary, this is the least period contemplated by nature in regard to the marriage union.

And here the great contrast already described between the few shortlived requirements of the animal offspring, and the almost complete and continuous dependence of the human child upon its parents, is confirmed and emphasised in a remarkable way. The young bird is able to rise from its nest, fully fledged and independent, in the very same season in which its parents meet and begin their love. Then, nature's task being fully accomplished in regard to offspring, and before a new love-season arrives, instinctively the parents' love dissolves, the conjugal union ceases, and they are free again until the next love-period arrives, "when Hymen in his usual anniversary season summons them again to choose new mates." * Not so with the union of man and woman. A large portion of their lives will

* See Locke, "Two Treatises on Government," ch. VII. where this argument is fully developed.

already have gone by before nature's commands in regard to their first child can possibly have been met, and in that time, normally speaking, other nurture-cycles will have begun; and thus the nurture-period in the case of the human family does not close until very late in the parents' lives, during all which time the marriage union is necessary in the interest of the child.

It will not be necessary to enumerate here at any length the reasons why marriage must endure according to natural law during the period required for the rearing of the child. These reasons have already been stated in our discussion on the necessity of marriage. But the brief statement of them given by St. Thomas Aquinas * may be quoted :—

"We observe," he writes, "that in those animals, dogs for example, in which the female by herself suffices for the rearing of the offspring, the male and female stay no time together. . . . But with all animals in which the female by herself does not suffice for the rearing of offspring, male and female dwell together . . . so long as is necessary for the rearing and training of the offspring. This appears in birds whose young are incapable of finding their own food immediately after they are hatched; for since the bird does not suckle her young with milk according to the provision made by nature in quadrupeds, but has to seek food abroad for her young, and, therefore, keep them warm in the period of feeding, the female could not do this duty all alone by herself; hence divine providence has put in the male a natural instinct of standing by the female for the rearing of the brood. Now in the human species the female is clearly insufficient of herself for the rearing of offspring, since the need of human life makes many demands which cannot be met by one parent alone. Hence the fitness of human life requires man to stand

* "Summa Contra Gentiles," III. 122. Our translation is that made by Father Rickaby, S.J., in "God and His Creatures."

by woman . . . and not to go off at once and form connexions with any one he meets. . . . Nor is this reasoning traversed by the fact of some particular woman having wealth and power enough to nourish her offspring all by herself; for in human acts the line of natural rectitude is not drawn to suit the accidental variety of the individual, but the properties common to the whole species.

"A further consideration is that in the human species the young need not only bodily nutrition, as animals do, but also the training of the soul. Other animals have their natural instincts (suas prudentias) to provide for themselves, but man lives by reason, which takes the experience of a long time to arrive at discretion. Hence, children need instruction by the confirmed experience of their parents: nor are they capable of such instruction as soon as they are born, but after a long time, the time, in fact, taken to arrive at the years of discretion. For this instruction, again, a long time is needed. And then, moreover, because of the assaults of passion, whereby the judgment of prudence is thwarted, there is need not of instruction only but of repression also. For this purpose the woman by herself is not competent, but at this point especially there is requisite the concurrence of the man, in whom there is at once reason more perfect to instruct, and force more potent to chastise. Therefore, in the human race the advancement of the young in good must last not for a short time, as in birds, but for a long period of life. Hence, whereas it is necessary in all animals for the male to stand by the female for such time as the father's concurrence is requisite for bringing up of the progeny, it is natural for man to be tied to the society of one fixed woman for a long period, not a short one. This social tie we call marriage." *

* In the further development of this argument (ch. 123) St. Thomas calls attention to other evils occurring in the terminable marriage system. For instance, where divorce is possible the mother

After the birth of children, therefore, there is need of continued care and direction for a very long period, with a view to the development of the child, both in the physical, the intellectual, and the moral order. In the intellectual and moral order it is particularly necessary at that age at which boys pass into manhood and girls into womanhood, the age at which young people are subject to most dangers. To break up the marriage union at any point in that grave period of the child's career would be to inflict on it a very great injustice which could never afterwards be rectified. The child is the chief loser through the divorce of husband and wife. This is the clear testimony of reason, and it is confirmed also by what experience teaches us of the children of divorced parents. "He leaned forward," writes the novelist,* "and touched Nick on the head. . . . When I divorced your mother (he said), I obtained damages from the man who had betrayed her. But who paid, do you think? Who pays—always, always? Good God! It is the child who pays. The man and the woman go their way separately, and forget or stamp on the head of remembrance. They find new interests in life, stifle their conscience, and find new love. For good or evil their characters have been made. They do not alter much. They are the heirs of their own childhood. But how about the child who is just beginning life? who needs mother-love as well as father-love for the foundations of belief, for faith in the essentials of life, for guidance in the beginning of the journey? You

will be more solicitous to provide for her own future than for that of the child. Secondly, the possibility of divorce leads to the commission of those crimes on account of which divorce is given. Thirdly, in the family where divorce is anticipated there will be frequent misunderstandings. On the other hand, how many misunderstandings are made to disappear through the consciousness that, for better for worse, the lives of husband and wife are bound together inextricably to the end.

* Philip Gibbs, in his beautiful and powerful work, "The Custody of the Child."

know, Nick, you know. It is you who have paid the price—to the full—every brass farthing of it."

And herein lies the first and irreparable sin of the divorce court. In other connections before a contract is voided by the courts, even at the instance of the framers of the contract, the interests of third parties are always considered. But in the divorce court, the interest not of a third party but of the first party, and the only first, the party to whose good the marriage contract is, in the order of nature itself, wholly subordinate—that interest is not only left unprotected but is even contemptuously ignored; only the passions and the feelings of the parents are considered. The marriage union brings the child into existence; in the order of nature it is for the sake of the child that marriage as an institution exists at all. From the day, then, that marriage is entered upon, the first responsibility of the parents is not to one another but to the child. At divorce, on the other hand, as we have said, the child's life and interest are completely ignored, and its future sacrificed to the convenience of its parents. In comparison with this tragedy of the betrayal of the child at divorce every other tragedy of the home shrinks into insignificance. Circumstances may, indeed, arise in which the child loses apparently little in the loss of its parents' care. But nature frames her canons of good and evil not in accordance with such abnormalities, but in accordance with the usual needs of men. And, to the child, the loss of parents, regarded in itself, is naturally a loss of the first magnitude."

II. We have now seen that according to the strictest and most indispensable, or what are called the primary precepts of natural law, marriage is an enduring union lasting as long as fertility lasts, and for about twenty years after. It is a union, therefore, enduring by strict natural law up to the age of about seventy years. It will hardly be necessary to put up a defence of indis-

solubility for the brief span of life remaining after that period, since it is hardly to be expected that those who have shared the joys and sorrows of life so long together will wish to part at the end when, more even than in youth, they should appreciate and support each other. Divorce, in fact, as a practical problem seldom arises except in the earlier years of marriage, while as yet even the first child has not been provided for, and when, therefore, divorce is excluded by every consideration of natural law.

Still for completeness' sake it will be necessary to show here how the natural law stands in regard to the last few years of the parents' lives, *i.e.* to enquire whether the binding character of the marriage union survives the period of up-bringing and remains to the end of life.

Up to the present our reasoning has all been based on the requirements of the primary end of marriage—the good of the child. What is more, we have considered only the child's indispensable needs—the most stringent requirements of birth and training, and the primary laws based on these requirements. We have yet to consider the secondary laws * of marriage, based, first, on the perfections of the primary end, and, in the second place, on the secondary end of marriage—the good of the parents themselves. And reasoning from both these subordinate ends of nature it is possible to show that marriage is an indissoluble union, lasting to the end of life.

We shall, in the first place, adduce an argument specially relating to the period now under consideration, viz. that which is normally subsequent to the up-bringing of the family, and to which the primary

* These secondary laws are not so important as the primary, because the ends which they are intended to secure are not so important. Under a system in which only natural law obtained, the public authorities could dispense from the observance of the secondary laws for very grave reasons; but they could not dispense from the primary laws.

natural laws do not extend. In presenting this argument it is necessary to remind the reader of two things, first, that we are here dealing, not with imperfect, but with perfect divorce, or the dissolving of the marriage bond *with a view to the contracting of a second marriage;* secondly, that we are considering here the attitude, not of the civil law or of the Church, but of nature towards the dissolution of marriage; we are considering a system in which the only authority being exercised is that of nature; and, therefore, the only question with which we are concerned is whether, as soon as the family is reared, nature herself dissolves the marriage bond with a view to the formation of a second marriage.

Now, that nature herself does not dissolve the marriage bond under the conditions we are here considering is evident from the mere statement of these conditions. The case here contemplated is that of a man approaching the end of the normal life. If nature dissolves the marriage of such a man with a view to a second marriage her clear intention in that, as in any other marriage, is that the man should marry a woman of the age at which normally marriages are undertaken, this being the age at which nature supposes women to marry.* On the other hand, it is nature's purpose when a woman marries that her fertility should be turned to full account in order to the setting up of the full natural family, and, in the case we make, these two requirements of nature are quite incompatible. The fertility which nature bestows upon a young woman could not be exhausted by marriage with a man very advanced in years; the full family could not be founded; and, therefore, it is impossible that nature should herself dissolve a marriage already existing with a view to such an ineffectual union as this. Of course, if one of the parties to the existing marriage should die, the tie of

* Old people may, of course, marry; but the natural age for marriage is that at which the faculties are first sufficiently matured, not that of their decline.

marriage is broken automatically, not by nature's doing but by death; and then nature will *tolerate* a second marriage for as much of nature's goods as the parties can secure. But in a scheme where marriage is controlled by nature or natural law only, if a man already advanced in life can validly enter a second marriage whilst his wife is living, it is because nature herself has dissolved the union in order that the man may marry again; but it is obvious that this is not the way in which nature provides for the continuance of the family life. Indeed, were such dissolutions and second marriages to become common they would seriously affect the propagation of the race, that is, they would impede and not promote the chief end of nature, which is the continuance and increase of the race.

We now go on to develop certain other arguments which also go to show that by the secondary laws of nature marriage is *absolutely* indissoluble, that it can never be broken.

(*a*) We * saw that by the primary laws of nature marriage endures up to the end of the training period. But the natural relations of parent and child do not end when the child is reared. The parents are the cause of the child's existence, and, therefore, they are responsible for them at every age. The child, no doubt, when fully trained is independent of his parents. But if for any reason a son or a daughter should meet with misfortune or should become a charge on others that charge falls, first of all, on the parents, and, therefore, their union should continue to the end.

Again, there is the argument arising out of property. Parents, as we have already seen,† are empowered by nature to gather property together, and to become its owners, principally with a view to the needs of children.

* The arguments under *a* relate to the interest of the child (the less essential interests); those under *b* refer to the welfare of the parents.

† p. 122. The present argument is given by St. Thomas Aquinas.

The children, therefore, are the natural heirs of the parents and have a natural claim on the family property. Consequently the parents are not free to dissolve their union in order to enter a second marriage; since, if this could be done, the rights of the children would have been given them to no purpose.*

(*b*) To these arguments based on the unessential good of the child we may add others based on the necessity of the parents to one another.

In the first place, man is the natural support of woman. Now, in any particular case there is no one on whom this natural duty of support devolves so directly as on the woman's husband. And this duty is not one that diminishes in cogency as the years go by, on the contrary, it increases as the woman becomes older, and, therefore, a man should stand by his wife in her old age and unto the end.

Indeed, from this point of view, it is possible to show that a woman has a right in commutative justice to support and fidelity to the end. For, having given herself to her husband during the whole period of fertility, and for as long as youth and beauty remain, she has given him her whole life in so far as it could have a value for him. In return she must get love and protection for her whole life.

Again, at divorce the woman is always at a disadvantage as compared with her husband, for she is the weaker part and always dependent on another. But after the rearing of her family what position is the woman in to find another husband from whom to obtain support?

Indissolubility is also established from the nature of

* In connection with all these arguments it is to be remembered that by the death of one of the parties the marriage union automatically comes to an end, and then we cannot urge our reasonings based on the design of nature in regard to the marriage union. The parent may, no doubt, have certain duties surviving from his first marriage, but in taking account of them we must not lose sight of the right of freedom which is given him by the death of the other party.

marital love. The love which a husband should bear to his wife is not a love of sense merely—it is not mere animal love based on passion. His love should be a human love, a love based on friendship more than on passion—a love, therefore, which not merely receives but gives also. The love of passion is selfish and, therefore, it lasts a short time only, *i.e.* as long as the attractiveness of the woman lasts.* The love of friendship is unselfish, it increases with every year that passes, and endures till death. The man, therefore, who is attracted to stay with his wife while she is young and beautiful, and throws her aside when she is old, has never loved her in a human way, but as an animal only. True human love is not expressed by the formula, "I love you for a year or as long as you are young" (that would be a travesty of human love); but by the formula, "I love you," or which is the same thing, "I love you absolutely, and without restriction of time, *i.e.* for ever." "Love," says the poet, "is love for evermore."

Finally, we may note that any recognition of divorce is bound to lead to endless multiplication of the causes for which divorce may be obtained, and, in the end, the dissolution of marriage will be left practically to the will of the parties. Marriages will even be entered upon with a view to their speedy termination, for the sake of the freedom enjoyed by unmarried persons, and at the same time to avoid the disgrace attaching to the illicit union. Moreover, divorce will be sought at the earliest possible period so as to enable the parties,

* The love of the animal goes out to the object only for the moment. The animal thinks only in the present. As soon, therefore, as present attractiveness ceases its love perishes. But human thought and feeling are not confined to the present but travel back into the past and forward to the future :—

> "'Tis thou art blessed compared wi' me
> The present only toucheth thee;
> But, och! I backward cast my e'e on prospects drear,
> An' forward, tho' I cannot see, I guess and fear."—BURNS.

And, therefore, true human love is given for the future as well as for the present.

and particularly the woman, to find other partners in life; and thus the children, *if there should be children*, will be left uncared for even in their tenderest years. In this way the recognition of divorce leads on to a condition little short of promiscuity, and in the end to racial decay and death.

To sum up—by the primary laws of nature, marriage is an enduring union, lasting as long as is required for the birth and the rearing of children. And since, in nature's intentions, the birth of many children is contemplated, and since the natural laws are framed according to the natural requirements, it follows that the marriage union by the primary natural laws is not a brief union—on the contrary, it must endure till near the end of life. By the secondary laws of nature, however, based on the more perfect relations of parent to child, and also on the needs of the parents themselves, marriage is an indissoluble union, broken only by the death of one of the parents.

Difficulty.

Where one of the parties is infertile would it not seem that our reasonings, based on the needs of children, are wholly inapplicable, and that, therefore, marriage under such conditions has not even that degree of stability which is said to be required by the primary laws, viz. that it should last for so long as the rearing of the child requires?

Reply. We are here enquiring into the natural laws and properties of marriage as an institution. Now, the natural properties of anything are determined by its natural end,* and, therefore, since nature in the institution of marriage aims principally at the birth and rearing of children, and since this, as we have just seen, requires indissolubility, so, indissolubility is a necessary and inseparable natural property of the married state. Once, therefore, a marriage is really and truly contracted it retains all its essential properties, including indissolubility, no matter what may be the circumstances of the parties concerned, and, therefore, no

* We also use, as a test of what is natural, the normal or the usual, for what is natural is sure to be the normal also.

matter what may be the number of their children and whether they have children or not.

From this it follows that the only question that can possibly arise in regard to infertility and the marital attributes is the question whether a marriage entered into between two persons, one of whom is infertile, is a true and valid marriage contract; for, if it is, then such a marriage, just like any other, is naturally indissoluble. And that such a marriage is valid is evident from the laws ordinarily governing the validity of contract. In any contract it is possible to distinguish the object and the end; and the contract will be valid so long as its object exists, no matter whether the end is actually attainable or not. If I buy a book in order to pass an examination, the contract, whether I attain this end or not, is valid once the object—the book, is given and paid for. It is so also with marriage. The end of marriage is the generation of offspring. The object given and accepted, and which the contract directly concerns, is the *usus corporis*. If that is possible the marriage contract stands and is indissoluble. If that is impossible, as in the case of *impotentia*, the marriage contract is invalid and the question of dissolubility or its opposite does not arise.

The Natural Impediments

There are some impediments which make the contracting of marriage unlawful but do not render the marriage null and void; for instance, a promise of marriage made to another. These are called impedient impediments. Other impediments render the contract null and void. They are called diriment impediments. But some diriment impediments arise by natural law, some depend on positive or civil or ecclesiastical law only. In Ethics we deal exclusively with such impediments as depend on natural law. These natural diriment impediments may be enumerated under such headings as the following: Some arise out of the want of the necessary consent, for instance, a mistake as regards the person with whom the marriage is being contracted—thinking one is marrying one person when one is really marrying another; under the same heading

comes the impediment of violence and want of freedom. Other diriment impediments arise out of some want or hindrance in the contracting parties. Sometimes this hindrance is of the nature of a personal defect which renders the object of marriage wholly impossible, *e.g.* impotence. Sometimes this hindrance is not in the nature of a defect. For instance, a previous and still surviving marriage with another person nullifies a second marriage; also consanguinity or affinity between the parties. In the present section we propose to examine at some length the important impediment of consanguinity.

THE IMPEDIMENT OF CONSANGUINITY

We have here to discuss the important and much debated question whether and how far consanguinity is a natural diriment impediment to marriage. By consanguinity is meant any blood relationship contracted through descent from the same parents or ancestors, *e.g.* the relationship of parent and child, of brother and sister, of cousins, of uncle and niece, of aunt and nephew. Consanguinity depends on identity of blood transmitted from one generation to another. It, therefore, requires a certain degree of proximity of relationship * since after a few generations identity of blood becomes lost in the parties by the infusion of new blood. "In every generation," writes St. Thomas,† "a new infusion of blood occurs whereas identity of blood is the cause of consanguinity." And, therefore, there is a limit beyond which we do not proceed in reckoning relationships of consanguinity. We shall here consider only the closer blood-relationships, and shall begin with the relationship of members of the same family, *i.e.* of parent and child, and of sister and brother.

* We need not consider the direct line here. By the time that a new infusion of blood occurs in this line, marriage would be out of the question.

† Suppl. ad 3 partem, LIV. 4.

The general relation of the primary and secondary laws of nature to the grades of consanguinity will readily be understood. All grades of consanguinity that render *impossible* or *seriously impede* the attainment of the essentials of the primary end, *i.e.* the birth and rearing of children, and, we may add, those that would wholly oppose the natural and essential relationship obtaining between parent and child, are forbidden by the primary laws of nature. Any degrees that *impede the attainment* of the secondary ends or the *perfect attainment* of the primary are forbidden by the secondary laws. Any degree of relationship that opposes the primary laws would act as a universal bar to the marriage union, prohibiting it in every case. A degree that opposes the secondary laws only, though in general a natural bar to marriage and a diriment impediment, might, nevertheless, through the intervention of the proper public authorities, be overlooked in certain difficult circumstances so as to allow the contracting of the marriage union.*

Parent and child.

In one of its grades, consanguinity is certainly an impediment to marriage according to the primary laws of nature, viz. in the case of parent and child. For, though under such a union, the primary end of marriage, *i.e.* the birth and rearing of children, may be attained (non totaliter tollitur), nevertheless, (1) the gaining of this end is seriously impeded; and again, (2) such a marriage reverses the essential natural position of parent and child.†

(1) Speaking generally, it is possible that in a single case a healthy child should issue from the union of blood-relations. But the general tendency of such unions is undoubtedly prejudicial to the health of the child. The deleterious results of close relationship in

* See p. 418-19.
† See p. 418, note.

the marriage union do not, indeed, always manifest themselves in individual cases, and a fresh infusion of new blood into the line may even have the effect of neutralising the deleterious consequences already contracted but not manifested in a single case, and so these consequences may never actually appear.* But the general tendency of the consanguine marriage is certainly prejudicial to offspring, and such marriages have only to be practised on a sufficiently large scale in order to manifest their true character as intrinsically and essentially harmful to the child.†

Now these consequences are not all deleterious in the same degree to the child. Where the parents are very closely related the consequences are of a serious character, and in these cases nature prohibits the contracting of marriage, and her prohibition varies in effectiveness and necessity according to the degree of closeness holding in the relationship. As, however, the degree of relationship diminishes, the effects also are found to diminish until finally a point is reached where

* "Breeders of domestic animals inform us that the mixing in of even a drop of unrelated blood is sufficient to neutralise the injurious effects of long and continued close in-breeding"—(Westermarck, *op. cit.* p. 339).

† There can be no doubt, for instance, about the terrible effects of continued in-breeding between persons related collaterally in the first degree. The Veddahs of Ceylon are said to be given to this terrible custom, and the effect is given by Mr. Bailey (Transac. Ethn. Soc., N.S., II. 294; quoted by Westermarck)—"the race is rapidly becoming extinct; large families are all but unknown." And if such are the consequences of this particular degree of consanguinity in parents, more terrible still would be those attending the marriage of parent and child.

But whereas nobody would seriously attempt to question the consequences in the case of the two very close relationships just considered, some writers have called in question the existence of any very bad effects from the marriage of persons related in the second or third degree. But though in particular cases these evil consequences may not appear, they certainly do exist, and if such marriages are multiplied the effect soon becomes discernible in such ways as physical weakness, epilepsy, neurasthenia and other diseases of body and mind. The effects of such unions may be deduced not only from the statistical tables quoted by Westermarck, but also from the statements of breeders of animals as to the deleterious consequences of continued in-breeding, also to be found in Mr. Westermarck's work.

the deleterious effects though possible, and in some cases actual, are so insignificant that nature can no longer be said to prohibit, or even to discountenance, the marriage of the parties.

Within the area of prohibition, and judging by the effects of in-breeding alone, it is not easy to say where prohibition is by the primary laws and where by the secondary laws of nature only. Of one thing, however, we can always be certain; the primary laws of nature always extend to the extremes. In the present case the extreme of consanguinity is that between parent and child. In no other case is the blood-identity so complete as here. "A daughter," writes St. Thomas,* "is, as it were, identical with her father, since she comes of his substance (cum sit aliquid ejus); but a sister is not in any such way identical with a brother since she is not of his substance—rather both are descended from the one principle." Therefore, if the general tendency of blood-relationship in any degree is prejudicial to offspring, the relation of parent and child should be prejudicial to offspring in the highest possible degree. Such a union would consequently be prohibited by the primary precepts of the natural law.†

But if the union of parent and child in marriage is inordinate in respect of the life of their offspring, it is doubly inordinate by reason of the fact that such a marriage not only opposes but reverses the essential natural relation of parent and child.‡ As a child, a daughter is subject to her father, since her existence is from him. By marriage they would be rendered equals. These two relations cannot be reconciled. Picture a father seeking his daughter's hand with a view to

* Suppl. ad 3 partem, LIV. 4 ad 7.

† In *Summa Theol.* St. Thomas in connection with the case of parent and child, makes no mention of the deleterious effects on offspring of the blood-relationship. He rests his whole case for the essential unlawfulness of marriage between parent and child on the argument given here in the second place.

‡ viz. the present parents in relation to each other.

marriage. More unnatural still would be the marriage of mother and son. As child, the son is subject to his mother, as husband she would actually owe him obedience. The marriage of parent and child is, therefore, the complete reversion of the essential relations obtaining in the family.* And for this reason it is forbidden by the primary natural laws.

Brother and sister.

The marriage of brother and sister is not opposed to the primary laws, since the essentials of the primary end of matrimony are obtainable in such a union. Children can be born of such a marriage, and there is not the same degree of danger to the offspring as in the case already considered. It, therefore, does not fall under the *extreme ban* of nature which is the effect of prohibition by the primary laws. Neither is there any such reversion of the natural relationships obtaining in the family as was the case where parent married child.

Nevertheless, the deordination of such a union is so obvious that no one will doubt that these marriages are forbidden by nature, at least in its secondary laws. For, in the first place, the injury to health, bodily and mental, of offspring is grave enough to justify us in claiming that the primary end of marriage, if attained at all, can only be attained in a very imperfect way.† Secondly, such marriages are opposed to one of the secondary ends of marriage which is the welfare of the parents. This latter argument may be expanded in the following way: brother and sister stand to one another in a relation which is by nature the closest possible—a relation which is quite unique in society. Sprung from the same parents, identical in blood, reared at the same hearth, they owe each other a special love and should treat each other with special confidence.

* The argument is fully given in St. Thomas—Suppl. ad 3 partem LIV. 3.

† See cases already quoted, p. 445.

And this love and confidence are a natural good to brother and sister, a good of immense import and value in their lives. Were brother and sister free to marry, this beautiful natural relation would be turned into a source of evil instead of good. Intimacies would be impossible in such a home. Confidences would be misunderstood. The possibility of marriage between persons thus forced to live together before maturity is attained, would have the effect of giving rein to passions which it is the business of marriage to regulate according to law. "Finis matrimonii secundarius," writes St. Thomas,* "per se est concupiscentiae repressio; qui deperiret si quaelibet consanguinea posset in matrimonium duci, quia magnus concupiscentiae aditus praeberetur nisi inter illas personas quas oportet in eadem domo conversari esset carnalis copula interdicta."

Finally, it is always necessary, as we have already said, when determining the laws and properties of marriage, to estimate its effect not only on children and parents but on society at large, for marriage, above every other natural institution, aims at the welfare of society. Now, besides the general deterioration of offspring and of society, both in regard to mind and body, that must ensue, and the moral danger to society generally which would of necessity follow on allowing the marriages of brother and sister as a general practice, society would also be adversely affected in two special ways not yet discussed by us, viz. first, by the public confusion that must arise where relationships of parent and child, and sister and brother have to be ascribed to the same individuals, a point which it will hardly be necessary further to enlarge upon; and secondly, by the fact that the marriage of brother and sister provides no additional bonds of friendship and relationship in society, such as are set up by the marriage of unrelated persons, and on which society depends so much for its compactness and strength. When strangers marry, new

* Suppl. ad 3 partem LIV, 3.

bonds of friendship and unity spring up between their blood relations. When brother and sister marry, no new friendships arise, their respective blood relations being already one, and, therefore, society is all the weaker for such marriages. "Per accidens," writes St. Thomas, "finis matrimonii est confederatio hominum et amicitae multiplicatio, dum homo ad consanguineos uxoris sicut ad suos se habet; et ideo huic multiplicationi amicitiae praejudicium fieret si aliquis sanguine conjunctam uxorem duceret, quia ex hoc nova amicitia per matrimonium nulli accresceret."

The marriage, therefore, of brother and sister is forbidden by the secondary laws of nature. It is more stringently forbidden even than plurality of wives, because it more seriously impedes the natural ends, and if allowed generally would be even more disastrous for the race than polygyny is. So great, indeed, are these evils that such a union could hardly be allowed except in such extreme circumstances, that, unless such marriages were allowed, the race could not survive.*

The remote degrees.

The evils which we have just described as characteristic of marital unions between brother and sister, attach also to the unions of persons more distantly related but in a less degree than in the case of brother and sister. Here, no doubt, for instance in the case of near cousins, the effect on offspring cannot but be prejudicial, and the gravity of this effect should act as a warning to legislators to keep these marriages within such limits as it is open to the law to impose. Such marriages are also attended by those other evils which we have described as present in brother-and-sister marriages. For instance, besides the brother-and-sister relationship, the near-cousin relationship also imposes a duty of love and confidence; but such confidence would be both dangerous

* We are here speaking of a condition in which men are bound by the natural laws only.

and open to be misunderstood, and companionship would be poisoned at the root, did not the public law so discountenance the marriages of near cousins that no expectation of them could normally be entertained.

But though attended with grave evils if practised on a large scale, such marriages are not so gravely evil that it can be said of them that they are *forbidden*, in the proper sense of that word, by natural law. There is a vast, and, we might almost say, a qualitative or specific difference between the marriage of persons belonging to the same strictly natural family unit, *i.e.* the group of parents and children, and the marriage of other persons, no matter how closely related. In the first case there is always grave danger to the health of offspring. Also, the special bonds holding the natural family together are wholly different from, and even exclude all the other attractions and *liaisons* leading to marriage. In the marriage of persons remotely related, on the other hand, there is always a good and fair probability that the children may not be adversely affected by the relationship,* whilst the danger of perverted intimacy is not proximate where persons need not be reared at the same hearth. Accordingly, such marriages can hardly be said to be *forbidden* by nature, even by its secondary laws. Nevertheless, the evils attendant on them, *particularly where they become of common occurrence* are real and obvious; and consequently, though not forbidding them, nature discountenances them in every way. To the rulers of communities she leaves the duty of preventing such marriages by law. But the warning finger she always holds out to us, in the disasters with which she invariably visits the too frequent occurrence of these consanguine unions. Though of positive origin, therefore, the impediment of consanguinity in the remoter degrees may in one sense of the word be spoken of as natural, viz. that it is set up

* If widely practised, however, the sum of the deleterious effects, such as they are, would quickly and easily become discernible.

by the public ruler at nature's instigation, and that it is based upon important natural requirements.*

Endogamy and Exogamy.

Endogamy is the custom of forbidding marriages outside the tribe. Exogamy is the prohibition of marriage within the tribe, or at all events within some particular clan of the tribe. Amongst some savage races endogamy is practised, amongst others exogamy. Sometimes the tribe as a whole is endogamous, the clan exogamous. The reasons for endogamy scarcely require to be enumerated. It keeps property within the tribe. It produces a sense of tribal solidarity, or what Lord Avebury calls "race-pride," † and of aloofness which is not without its value, particularly in a hostile environment. Where endogamy prevails it is always found that the tribe is large enough to obviate the possibility and effects of in-breeding.‡

Exogamy was for many years held to be due to causes which had no connection with the natural laws of marriage in regard to consanguinity. For instance (*a*) it was regarded by McLennan § as due to the capture of foreign women by the men of a particular tribe when a scarcity of women appeared in that tribe through the custom of female infanticide. "Thus the men would think more of foreign women in connection with wiving than of kindred women, and so marriages with kindred women would tend to go into desuetude." (*b*) Another theory, advocated by Westermarck, is that exogamy is due to "an innate aversion to sexual intercourse between persons living very closely together from early youth," and, "as such persons are in most cases

* "Affinity," is, like "consanguinity in the remoter degrees," a positive or civil, and not a natural impediment, but, like consanguinity, it is based on requirements of nature. Affinity between husband and wife does not indeed imperil the offspring in any way, but it is subject to the same grave defects that we have enumerated in the second instance in connection with the remoter degrees of consanguinity. Persons related by affinity are brought into the closest confidence with each other, and marriage should not be possible between them. Also it diminishes the social relationships on which society so much depends for its strength and solidity.

† "Origin of Civilisation," p. 118. Compare the "brother and sister" marriages of the Egyptian kings.

‡ See Starcke, *op. cit.* p. 222.

§ "Studies in Ancient History," p. 62. Lord Avebury and others fall into a curious blunder in their statement that according to McLennan marriage by capture arose from the rule of exogamy. Starcke attempts to give some explanation of this blunder (p. 215).

related, this feeling displays itself chiefly as a horror of intercourse between near kin." (*c*) According to Crawley and many others exogamy is due to a taboo with which custom marked the women of the household in the eyes of the men. In the household, for instance, the sexes lived apart. This taboo would easily prevent marriage union with the same females. "Sexual taboo," he writes,* "produces a religious separation of children in the home; the father took the boys about with him while the mother took the girls; it is afterwards enforced by the principle of sexual taboo, and its extension by the use of relationships produces the various forms of exogamy." (*d*) Lord Avebury,† without having recourse to McLennan's theory of female infanticide, explains exogamy as due to the capture of foreign women. In the beginning all women were common, but a captured woman was the property of her captor. The other women of the tribe would soon come to perceive that the captured woman's was the better position and would desire to "exchange their nominal freedom and hazardous privileges for the comparative peace and security of the former." (*e*) A theory defended by Spencer ‡ is to the effect that captured women were not merely slaves but trophies also, and the tribe that had in it most foreign women would come to be regarded as the bravest and most honourable. The custom would thus easily develop into an imperative requirement that wives should be taken from other tribes either in battle or by "private abduction." (*f*) Starcke § explains exogamy as a result of certain legal considerations. Closely allied persons are not in law regarded as distinct persons, whereas the law of marriage required that the parties should be distinct and independent. (*g*) Finally, there are the innumerable theories connecting exogamy with totemism.‖

We think we are quite safe in claiming that all these "positivist" theories of exogamy have given, or are giving place, in more recent years to the far easier and more natural explanation which bases exogamy on the requirements of marriage in regard to consanguinity. The fact that exogamy was not a mere custom but a law would of itself lead us to

* "The Mystic Rose," p. 443.

† According to Lord Avebury's theory, in woman-capture is to be found not only the historical cause of exogamy but of marriage itself as an institution.

‡ "Principles of Sociology," I. 621.

§ *op. cit.* p. 233.

‖ For these see E. Crawley, "The Tree of Life," p. 177, and Sir J. G. Frazer in "Totemism and Exogamy," III. 445.

think that exogamy was based on rational grounds and that it did not arise out of mere accident. And the most rational ground that one can conceive is to be found in the end which all would admit to be important, and which exogamy was itself exceptionally fitted to achieve, viz. the prevention of marriage among near kin. "Each successive bi-section of the community," writes Dr. Frazer, * "was deliberately instituted for the purpose of preventing the marriage of near kin," and again,† "that the exogamous system of these primitive peoples was artificial, and that it was deliberately devised by them for the purpose which it actually serves, namely, the prevention of the marriage of near kin, seems quite certain. On no other reasonable hypothesis can we explain its complex arrangements so perfectly adapted to the wants and ideas of the natives." ‡

It has been claimed by Mr. Westermarck that savages could not possibly have possessed such a knowledge of the physiological effects of incestuous marriages as would induce them to introduce a law based on "sagacious calculation" of these effects. But surely after experience of many generations it would be possible for a savage tribe, to which physical vigour would be of more importance than any other possession, to gauge, if not in detail, at least in a general way, the effects of these incestuous unions, and they would have all the greater opportunities of studying these effects if at any period in-breeding became common through want of outer friendly relations with other tribes. As Sir Henry Maine § remarks, it is not difficult to suppose that the tribes that discovered the use of fire and selected the best forms of animals for domestication and of vegetables for cultivation might also be capable of discovering, after an experience of centuries, that healthier children were born more generally from unrelated than from related parents. That the moral effects also of allowing marriages between people of the same

* "Totemism and Exogamy," IV. 106. Exogamy was almost, though not absolutely, infallible as a preventive of marriage among near kin. It would fail to prevent marriages of father and daughter under the matriarchal system, where the children belonged to the tribe of the mother. But for these cases a tribe could rely on the instinctive horror with which such marriages would usually be regarded

† *ibidem*, p. 134.

‡ Of course this principal purpose of exogamy would not exclude other subordinate purposes also, *e.g.* the obtaining of wealth with their wives, and also the extension of tribal influence. On this, see Le Roy, *op. cit.* p. 108.

§ "Early Law and Custom," p. 228.

blood were known to the savage races is evident from the precautions taken to separate the sexes even from early youth.

But Lord Avebury asks, is it reasonable to suppose that in order to prevent a man marrying a very few women to whom he was closely related he would be forbidden half the women of the tribe to whom he was not related at all? Now this difficulty rests on an entire misunderstanding of the position; for, first, these tribes were for the most part consanguine tribes, and, therefore, in general all the men and women would be related. Secondly, as Westermarck himself confesses, the forbidden degrees were far more numerous amongst the savage tribes than amongst civilised peoples.* Of a certain savage race Westermarck relates that a man of the tribe "will not marry a girl whose relationship by blood to himself can be traced, no matter how distantly it may be." Thirdly, it is pointed out by Starcke † that as a rule exogamy affected not the tribe but the smaller clans composing the tribe, and that, though it is not quite certain, there are nevertheless reasons for believing that the clan was always a group of kinsfolk either known to be related by blood or kept together by the idea of common descent.‡

We think, therefore, it can be said with certainty that exogamy was not due to any such accidental causes as are enumerated in the beginning of this note, that it represented, on the contrary, some kind of reformatory movement amongst the savage peoples, and that it was a device adopted in order to prevent the marriage of kin. "Exogamy," writes E. S. Hartland, F.S.A.,§ "as generally understood, has nothing to do with race or nationality. It is simply the savage rule corresponding to our title of prohibited degrees. A man may not marry . . . one who is akin to him, therefore, he may not marry . . . any member of his clan."‖

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* *op. cit.* pp. 297, 307. On grounds of consanguinity, therefore, even the whole tribe might easily be excluded.

† We cannot be certain about the correctness of the first part of this opinion.

‡ *op. cit.* p. 224.

§ Essay in series of Anthropological Essays to Dr. Ed. Tylor (1907), p. 202.

‖ We think it fair to state that in his work, "Totemism and Exogamy," Dr. Frazer, having explained (the quotations have already been given) exogamy as a device for preventing the marriage of near kin, proceeds then to modify this clear statement by adding that this is rather to be regarded as the effect of exogamy, than the conscious purpose in the mind of those who introduced it. The savage law-givers in the case only acted as "instruments in the hands of that

APPENDIX

HISTORICAL

POLYGYNY

The question arises as to how far polygyny is practised amongst the savage races. It is certain that many of the lower races are polygynous, but not so many as their low moral condition and their slight opportunities for development and for the entertaining of the higher natural ideals, would lead us to expect. Mr. Westermarck quotes innumerable instances of savage peoples who are strictly monogynous, and they include some of the races farthest removed from civilisation or from contact with civilised peoples. Indeed, anthropologists are now fairly well agreed, and the fact is a very suggestive one, both for history and for moral science, that the nearer we get back to the primitive stock, the more prevalent and steadfast becomes the monogynous union. It is, as a rule, only when the savage races come into contact with civilisation that polygyny appears among them, which, however, disappears again as we enter the area of civilised peoples. "Monogamy," writes Westermarck,* "always the predominant form of marriage, has been more prevalent at the lowest stages of civilisation than at the somewhat higher stages; whilst at a still higher stage polygyny has again to a great extent yielded to monogamy." Of exceeding great interest in this connection is the study in Comparative Sociology afforded by the races that inhabit the Malay Peninsula, of whom we have already spoken. These races, living in comparatively close proximity to one another, are all monogynous, but their monogyny becomes less and less defined and firm as they come into closer contact with the conditions of civilisation. The most primitive of all—the Semang Pygmies—who have scarcely ever been in contact with civilisation are, says W. W. Skeat,† "strictly mono-

unknown power, the masked wizard of history, who by some mysterious process, some subtle alchemy, so often transmutes in the crucible of suffering the dross of folly and evil into the fine gold of wisdom and good." We do not think that Dr. Frazer's original view has been rendered more lucid or more scientific by this addition.

* *op. cit.* p. 505.

† "Pagan Races of the Malay Peninsula." See also P. W. Schmidt, "Die Stellung der Pygmaenvölker," etc. Amongst these peoples there is often *before marriage*, a good deal of licence, a fact which has led some of the older investigators to consider that the women of this strictly monogynous people were actually common.

gamic." Amongst the next higher group, *i.e.* the Sakai, there is some polygyny. The third and highest group (Jakun), *i.e.* the group that has come into contact with other Malay and also Indian neighbours, is still monogynous, but its monogyny is only "fairly strict."

Amongst savage races pure polygyny in the sense of a number of wives all equal in point of position in the family is not of common occurrence. Rather, what is found is a kind of monogynous union, one woman alone being regarded as wife in the strict sense, namely, the first wife in point of time, the rest holding the position rather of concubine than of wife, a position completely subordinate to that of the first woman in the union. "Amongst the Greenlanders," writes Westermarck, "and most of the North American tribes who practised polygyny, the first married wife is the mistress of the house . . . Among the Mexicans, Mayas, Chibchas, and Peruvians, the first wife took precedence of the subsequent wives, or, strictly speaking, they had only one true and lawful wife, though as many concubines as they liked." The same custom is attested by M. A. Le Roy as prevalent amongst certain African races.*

The most interesting conclusion forced upon us by the preceding facts, a conclusion which, without the aid of actual historical record as to the laws and customs of savage tribes, might not have been suspected, is the following: that even the most primitive races are capable of appreciating not only the primary and indispensable laws and requirements of nature, but also her secondary laws, those, viz. that prescribe what is necessary for the developed life—at least within the domain of the family. And this capacity on the part of the savage is not to be wondered at. For the family is the first natural union known to man, it precedes the State and all those positive laws and conventions attaching to State life of which the savage is comparatively ignorant or oblivious; now, the excellences that constitute the better or more developed life of the family are excellences principally of nature herself, and are not the creation of positive law or convention; and, therefore, they are clearly known to the savage tribes.

POLYANDRY

If, as St. Thomas Aquinas allows, absolute promiscuity may have obtained in spite of its unnatural character amongst

* "La Religion des Primitifs," p. 101.

certain very degenerate races, then we are not to be astonished if some of the savage races are also found to be polyandric. Rarely has polyandry been found to affect an entire community; its ravages are generally confined to a few degenerate households or to a small district. Nevertheless, there are cases in which polyandry has obtained a fairly wide latitude and even received some kind of public recognition.

The cause of polyandry is generally two-fold, viz. poverty, whereby the multiplication of families is rendered difficult, and scarcity of women, which is quite a common feature of some savage tribes. "Very remarkable," writes Westermarck,* "is the striking coincidence of polyandry with the great poverty of the country in which it prevails. It seems to be beyond doubt that this practice, as a rule, is due to scarcity of women." "Polyandry," writes Hobhouse,† "is by comparison (with polygyny) an exceptional practice, the principal causes of which are most probably poverty and a deficiency in the number of women. On the evidence before us it is hardly to be described as an institution belonging to one of the great types of social organisation." Another reason sometimes quoted for the existence of polyandry is that it is a "device to preserve the estate undivided." ‡ Now, it is hardly to be thought that such a repellent means would be widely chosen for an object so good and reasonable as the preservation of an estate. However, we must admit that this explanation gains some colour from the facts to be described in the following paragraph.

Polyandry, *pure and simple*, is of extremely rare occurrence even amongst the most degenerate savage peoples. Where polyandry exists at all it is generally of the type known as Thibetan polyandry, in which an attempt is made to introduce modifications in the direction of the monandric union. Two types of polyandry are to be distinguished. One, which is of very rare occurrence, is known as the Nair type § being the kind practised by the Nairs of Malabar, the chief characteristic of which is the fact that the husbands are not related to one another by blood. This is the type we have spoken of as polyandry pure and simple. The other

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* *op. cit.* p. 472.

† "The Evolution of Morals," I. 143.

‡ Devas, "Studies in Family Life," p. 138.

§ For other characteristics of this type of polyandry see McLennan, "Studies in Ancient History." It is usually accompanied by descent in the female line.

is known as the Thibetan type, from the fact that it is the type followed in certain polyandric districts in Thibet. Its chief characteristic is that the husbands are all natural brothers, sons of the same parents. It is the only kind of polyandry that can be said to be widespread to any degree. Now the Nair type of polyandry may easily be explained as a result of degeneracy, poverty, and scarcity of women. Other causes are possible in the case of the Thibetan type. For instance, there is the hypothesis, already mentioned, of the desire to keep an estate undivided. Also it is maintained by some writers that where many brothers are spouses of the same woman, only one, the eldest, is really her husband; the others are simply illegitimate spouses who cannot marry through want either of money or of women. If this is true then the Thibetan type, which is the only system sufficiently widespread to be of importance, is really not a system of polyandry at all, but a degenerate monandry. It has been pointed out that one at least of the very gravest results of polyandry is avoidable under this Thibetan system, a fact which would tend to some extent to maintain the system in being, viz. that under it, the children, although of uncertain paternity, are certain to be of the same blood as each of the several husbands and, therefore, under any circumstances, the child would not be wholly without the care due to it by its real father. Its blood-relationship with all would secure for it care and support from all.

We may be allowed to mention that by some writers it has been asserted that polyandry of the Thibetan type must at one time have been more widespread than it is now or was at any time in the historic period. One of the proofs for this assertion is the law of the Levirat laid down in Deuteronomy,* and the Indian allied law of the Niyoga as laid down in the Law of Manu, both of which are supposed by some writers to be survivals of an ancient legalised Thibetan polyandry. In the Levirat it was decreed that should a husband be childless, at his death his brother should take the widow to wife and rear up children *to the deceased, which children also should be known by the name of the deceased.* This, it is asserted by McLennan,† can only be a survival from a period when brothers had all a common wife. In

* *Deuteronomy*, XXV. 5–10.

† *Fortnightly Review*, 1877. In the same journal of same year Spencer replied (p. 897).

the Law of Manu,* it is laid down that not only should the brother of the deceased marry the widow, but that even during the life of a childless husband his wife should be espoused to her brother-in-law, and the children born of him are regarded as the children of the really childless parent.

Now, McLennan's hypothesis is on the face of it far-fetched and even opposed to the facts. It is far-fetched because it ignores the most natural explanation of all, which is, that amongst many primitive tribes the property goes not to the son but to the brother of the deceased, and the widow would be regarded as included in a man's belongings. And even when the property went to the son it is impossible that his widow should pass as wife to the son, who was of course her own son as well as the son of his father. The widow, therefore, would naturally pass to her brother-in-law. But the really central reason why the widow was taken to wife at all by the brother of the deceased is clearly expressed in Deuteronomy, and it very properly fits in with all that we know of the sentiments of the people concerned, viz. that the *name* of the dead man might not be allowed to die. Amongst a race where childlessness was regarded as a grave misfortune it is intelligible that the continuance of a man's *name should be considered of importance*, and that even by a fiction of the law he should be regarded as not without descendants. McLennan's hypothesis is, therefore, not necessary in order to explain the facts. On the contrary, it is even at variance with the facts, for if the Levirat is simply a survival of polyandry there is no reason why the obligation of marrying a brother's widow should be confined to the case of a childless marriage. The Levirat is, therefore, evidently essentially connected with the childlessness of the first marriage, and not with any previous polyandric system.

There is no proof, therefore, that polyandry existed in the past in any wider degree than that in which it obtains to-day; and, as we have seen, the practice of polyandry is confined amongst savage races to very narrow limits. Even, however, if polyandry obtained more widely, and even if it should ever obtain recognition amongst races now accounted civilised, this would in no way diminish the intrinsic evil of the system, or modify the opposition in which it stands to nature's primary laws.

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* See "Ordinances of Manu" (trans. by A. Cook Burnell), IX. 59 In particular see note 1, p. 254.

INDISSOLUBILITY

As we said before, even the poorest savage races are capable of realising the things necessary for the family life, and necessary even for the better life of the family. And hence it is that even amongst those savage tribes that practise divorce, divorce is always recognised as a great evil.* But many of the poorest savage races prohibit divorce in every shape, and their opposition to it is determined not only by the effects of divorce on the race but by the claims of human affection, the rights of women, and of the children, as well as those other considerations which have been mentioned in the present chapter in connection with indissolubility. The requirements of the family life are easily understood even by the most untutored mind. And, therefore, as we said, many of the lowest races resist divorce. In the Andaman Islands, writes Westermarck,† "no incompatibility of temper or other cause is allowed to dissolve the union." "The Veddahs of Ceylon have a proverb that death alone separates husband and wife." The same holds true of the Papuans of New Guinea, of several of the tribes of the Indian Archipelago, California, the Rocky Mountains, of the Iroquois, the Patagonians (at all events where there are children), the Maoris (in large measure), the Solomon Islanders; also in New Guinea, and amongst the Zulus.

Where, of course, the level of morality all round is low, divorce is frequent. But it is a strange thing to find among the rudest peoples of the earth so many who, moved by the higher feelings of justice and affection, are faithful to the marriage bond through every adversity, and in face of all influences urging to its dissolution.

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* Le Roy, *op. cit.* p. 103.
† *op. cit.* p. 517.

CHAPTER XV

THE STATE—ITS NATURE, ORIGIN, AND END

Definition

The State is a perfect and self-sufficing society, consisting of many families, united under a common ruler, for the attainment of the complete welfare and life of the community.

First, the State is a perfect society. By a perfect society is meant one which is not subject to any other *natural* society, its end not being part of or tributary to the end of any other. The State is subject to no other natural society. It is the highest of all because its end is the highest and widest possible in the order of nature.

There is another sense in which we sometimes speak of a society as perfect, viz. that it has at its disposal all the means necessary for attaining its end, in other words, that it is self-sufficing. The State is perfect in this sense also. Self-sufficiency is not only an attribute, but the chief distinguishing mark also of the State, as will be seen in our discussion on the origin of the State. The State, therefore, is a perfect society in the fullest sense.

The State consists immediately of families and remotely of individuals. This we know from the position of the family in the order of nature. In nature there are three perfectly definite and distinctive units, the individual, the family, and the State. In the order of nature the family stands midway between the individual and the State, just as in the human body the organs stand midway between the cells and the whole organism,

And just as on account of this order of nature the body is said to be composed *immediately* of organs or limbs, and not of cells, so also society or the State is to be conceived as composed immediately of families and not of individuals.

The State is an organism presided over by a common ruler, for without a ruling authority the State could not attain its end. This we shall attempt to establish more fully in our discussion on political authority.

The chief end of the State is the attainment of the complete life and welfare of the community. It is not the function of the State to procure the welfare of the individual or the family. The individual and the family are provided by nature with faculties and energies for pursuing their own good. The end which the State procures is the welfare of the social body as such. Again, a community falling very far short of the degree of differentiation and organisation required for a State might succeed to some extent in promoting even the public welfare. But it is only in the State that man can develop to the full extent of his natural faculties, and attain to the complete life.

The meaning and significance of this definition will be more fully understood from what is now to follow on the origin of the State.*

The Origin of the State

As we have said, the first and most elementary form of human society known to nature is the family. We speak here of the family in a wide sense as consisting of parents, children, grandchildren, and the other immediate blood relations. These constitute one definite and distinctive natural unit.

We have claimed that the family is provided by nature with capacities and energies for promoting its own

* " He," says Aristotle, " who considers things in their first growth and origin, whether a State or anything else, will obtain the clearest view of them."—Pol. I. 2.

welfare. But the welfare which the single family is capable of promoting is of necessity narrow and elementary. It extends to the mere daily wants of the family; and it falls very far short of what we speak of as the developed or the higher life of man. In every relation of life there are things the providing of which requires the co-operation of many minds and hands; and these the mere family could not supply.

But as the family grows, the end which the family becomes capable of attaining also grows. The children of the original family increase in number, and in their turn marry and found new families, and thus a social environment begins to form in which exchange of services or division of labour becomes possible, and so the conditions of the higher or more developed life begin to be provided. It is to such collections of interrelated families, united together for mutual companionship and support, that Aristotle gives the name of "village community" (κώμη). Socially it represents a distinct advance on the simple family, and it represents also the first distinctive stage attained in the development of society out of the family.

But even when the village community * has appeared and co-operation and organisation have been made possible and the more developed life has already begun, many of the most essential requirements may still be wanting. There will be need, for instance, of some kind of military organisation for providing protection from enemies without; need also of economic organisation within, so that the units may not be altogether at the mercy of chance for their supplies from abroad and of the weather for their home crops; above all, there will be need of some degree of juridical organisation, *i.e.* of a common ruler, of a common body of laws for unifying

* Amongst uncivilised communities the horde might be regarded as corresponding to the family village-community which usually must have been consanguine; the tribe would correspond to the group of such communities. For "horde," "clan" and "tribe" see Giddings, "Principles of Sociology," p. 258.

the forces and capacities of the community and directing them to one end, and of tribunals of justice for settling disputes between the members. It is only gradually that such a degree of organisation is finally reached as really puts the growing community into a position to provide for all its wants. Before this condition is reached, aggregation may or may not occur of a small group of these consanguine villages, but when this condition is finally attained, and in whatever way it is attained, the community is no longer to be regarded as a mere group of distinct individuals or units, even units in alliance, but as a single unit, animated by a single life, self-centred, independent, self-sufficient.* It is this condition of self-sufficiency that marks the end of the process whereby the family grows, develops itself economically, differentiates itself politically, and finally emerges as a complete State. The condition of self-sufficiency is not only the end of the process but also the differentiating mark of the State. Of course, it is possible that even a single consanguine village-community might in some cases so increase in numbers and develop in organisation under the direction of a family head as to

* By the self-sufficiency of the State is not meant a condition in which every want of the State is actually provided for, but only such a degree of organisation and independence as normally enables it to provide the means whereby the growing wants of the community may be successively met. A community may be unable actually to provide for all its wants. It may suffer from insufficient food-supply or insufficient money; but if all those organs are present whereby, normally, States provide for the needs of the community, it may rightly be spoken of as a State. Much less is self-sufficiency to be regarded as the faculty of providing everything out of its own territory. Not every State, for instance, can supply itself with wheat or coal. But the organisation should be such as normally enables a State to supply all wants whether from within or without.

It has been asserted by Jellinek ("Das Recht des Modernen Staates") that the conception of self-sufficiency in Aristotle is a purely economic conception, that in the "Politics" a community is regarded as self-sufficing if it can provide for its own economic needs. This is a very narrow view to take of the self-sufficing State, and it is completely disproved by Aristotle's own analysis of the conception in "Politics," VII. 8, 7 and 8. It is there described as including the capacity of providing for food, arms, the arts, revenue, religion, and the tribunals of law and justice.

reach the stage of self-sufficiency without addition from outside; normally speaking, however, a high degree of differentiation and organisation can only be attained by the aggregation of several consanguine village-communities each with its own head. But, as we have said, in whatever way it is attained, the condition of self-sufficiency brings the community so developed and organised under a perfectly new social category, distinct altogether in end and aim, in potentialities and function, in its rights and obligations, from the family or limited group of families out of which it sprang. But it is because for the most part it is out of the union of several village-communities that the State is formed that Aristotle takes account of this "aggregate" form of union only, in his definition. "When several villages," he writes,* "are united in a single community, perfect and large enough to be nearly or quite self-sufficing, the State comes into existence," and, again, the State is "a union of families and villages, having as its end a perfect and self-sufficing life."

We see, therefore, how, naturally, the family widens into the village-community, and how the village-community comes gradually to acquire such a degree of organisation as makes it a self-sufficient society or a State.

Of course, it is to be admitted that a State might also originate in other ways than as a development out of the family. For instance, just as to-day a number of individual men wholly unrelated by blood might meet together, organise themselves into a single society, appoint a ruler, and declare themselves a State, claiming equality with the other States of the world,† so it is possible that in the beginning many persons unrelated by blood might come together from different districts, attracted, let us say, by the rich pasturage afforded to

* "Politics," I. 2, 3.

† As happened in 1854 in the case of the Orange Free State. The community in this case had previously been subject to another rule. Yet in this year it formed itself into a new State in the manner above indicated.

their cattle, and these persons might either gradually or suddenly become organised into a single community possessed of all the characteristics of a State. But such accidental associations as these, if they ever occurred, must have been very rare and exceptional, since in the pre-historic period it was the blood-tie that offered the surest guarantee of protection from enemies without, and of friendship and co-operation within. And, therefore, the most natural, and, as a consequence, the normal way in which the State would take its rise would be as a development out of the family. It is to this extent that Aristotle also defends the family origin of the State. The family was not the only possible .origin of the State, but it was the most natural origin "*The most natural form of the village,*" * writes Aristotle (and, we may add, since the most natural so also the commonest form), "appears to be that of a colony from the family, composed of children and grandchildren." It is, therefore, right to speak of the State as normally originating in the family † through the medium of the village-community.

From all this it is possible to determine in a general way the manner in which the State first made its appearance among men. Its first appearance was not of sudden occurrence; rather its coming was of gradual growth and the result of a very long process of development. Again, though each stage in the growth of the State was itself a result of conscious effort on the part of man, striving ever to meet the growing needs of the community, and though for this reason it would not be right to speak of the State as in its origin wholly outside of human purpose, since to aim at the successive stages by which self-sufficiency is reached is, in effect and

* μάλιστα δὲ κατα φυσιν.—"Politics," 1. 2, 6.

† This does not commit us to the "patriarchal" theory of the earliest form of society as defended by Maine. Other opposed theories might be admitted without prejudice to the view expressed above that the State is a growth out of the family (See McLennan, "The Patriarchal Theory," p. 27).

virtually, to aim at complete self-sufficiency which is the characteristic mark of the State, nevertheless, the State itself could not be said to have been consciously and formally aimed at from the beginning. Men do not, as a rule, aim at conditions of which they never had experience, more particularly conditions which it would be difficult to conjure up in imagination without experience. The State, therefore, was a growth, and to a large extent it followed the ordinary laws of growth. It grew to some extent as plants grow, spontaneously and independently of the contrivance of reason. "It glided," as Mr. N. L. Newman writes, "imperceptibly into existence as men became successively aware of the various needs bound up with their nature." * The work of forming political societies was, as Mr. Bryce † tells us, "done by tribes and small city communities before they began to be conscious that they were forming institutions under which to live." The State, therefore, was a growth and was not from the beginning clearly conceived by reason. But the stages that led to its formation were, as we said, for the most part devised by reason, and to that extent the State is to be described, not like the plant as a spontaneous growth, but as a human contrivance, as a product of human reason. In the first chapter of his work on Representative Government John Stuart Mill gives an account of two opposing extreme theories ‡ on the origin of the State, one of which represents it as a natural growth independent altogether of human thought and contrivance, the other of which likens it to a machine that is made by human hands and is wholly a result of human effort and purpose. Evidently the view defended by Aristotle and the view which is given here of the origin of the State occupies

* Introduction to "The Politics of Aristotle," I. 27.

† "Studies in History and Jurisprudence," II. 97.

‡ The first of these theories is defended by Comte ("Positive Philosophy") and in a modified form by Seeley ("Introduction to Political Science"), the second by the authors of the social-contract theory—Hobbes, Rousseau, Locke, and Kant.

a mean position between these two theories. The State is to a large extent a spontaneous growth, a gradual expansion from the family. But it is largely also a result of thought, it is a product of many converging acts of human reason. And as it depended on human reason in its origin, so it is reason that directs it now, and forms and shapes it, as the needs of man increase, to ever newer and higher perfections.*

* Aristotle's account of the origin of Society as a development out of the family is now very generally accepted by sociologists as the only account that harmonises with recent investigations into the organisation of the primitive tribes, which, it is stated, being all instances of arrested development, must now, as social communities, be organised on the same basis as that on which society was formed in its first beginnings. Any attempt at enumeration of writers upon this subject would here be out of place, but we may point to one or two authorities. For instance, Maine in "Early Institutions," p. 64, writes: "The most recent researches into the primitive history of society point to the conclusion that the earliest tie which knitted men together in communities was consanguinity or kinship." And L. T. Hobhouse ("Morals in Evolution," l. 49) writes: "primitive and savage society appears to rest generally on kinship. . . . The clan or group organisation with generally something of the wider tribal unity forms the normal society of the primitive world." "That the most ancient forms of government," writes Schrader ("Prehistoric Antiquities of the Aryan Peoples," p. 393) "amongst Indo-European peoples are based on the organisation of the family is an established fact." And Prof. Bury writes ("History of Greece," p. 19)—"the true power in primitive society was the family. When we first meet the Greeks they live together in family communities. Their villages are habitations of a γένος, *i.e.* of a clan or family in a wide sense, all the members being descended from a common ancestor and bound together by the tie of blood." See also Pelham's "Rome," p. 19.

The proofs to which appeal is made in support of this view of the origin of society and the State, viz that it is a development out of the family, through the village-community, cannot be fully developed here. But a few of these proofs may be briefly mentioned. There is first (*a*) the *a priori* proof, viz. that as the ancient families increased and subdivided they would naturally attain to some degree of organisation, and as, in the case of these ancient peoples, it would be difficult to superimpose on this family organisation another formed according to a completely different principle, so it is necessary to suppose that the earliest societies were all based upon kinship, in other words, that the family and the State organisations were coterminous and even identical. (*b*) The second proof is based upon the testimony of the earliest historians. There is, for instance, Thucidides' reference to the early villages of Greece, and to the "skilful Athenian general Demosthenes (who founded his hopes of conquering Aetolia on the weakness and disunion of a people still living in unwalled villages (κατὰ κώμας ἀτειχίστους)." These evidently are the family-village communities mentioned by other writers; there is also his reference

We now go on to describe very briefly the later relations of the State to the family before the State assumed the condition of complete and final independence of the family out of which it sprang. Having developed out of the family, the State, would, in the beginning, and for

to the Ozolian Locrians also living in family villages. Again, Aristotle himself testifies to the family village-communities of Greece. (*c*) Thirdly, all writers are agreed that the most primitive existing tribes are organised on the basis of family kinship (see, for instance, Spencer "Political Institutions," p. 274) and it is supposed that these primitive races reflect the most ancient form of social organisation. (*d*) Fourthly, there is the interesting argument based on *survivals* to the effect that even when the State had long begun to lead an independent life distinct from that of the family union, there still remained within it traces of the family out of which it sprang, for instance, the γένη of Athens, the *gentes* of Rome, all of which were, like the village-communities, groups consisting of a certain number of families. These family elements would seem to be the same as the old village-communities, because, as Warde Fowler says ("The City State of Greeks and Romans," p. 38), Aristotle speaks of the inhabitants of a κώμη as being ὁμόγαλακτες (suckled with the same milk) a word which, we know, was later applied to the members proper of an Athenian γένος. "These," Warde Fowler adds, "survived into the life of the State and even to the very end of it, because the ideas of kinship and religion could not be dissolved among them and were strong enough to hold them firmly together under the new order of things; and they remain . . as a powerful conservative influence holding back the State from a too rapid development as a new organism, and, as it were, keeping it continually in mind of the rock from which it had been hewn." (*e*) Finally, there is the argument in favour of the family origin of the State which is developed by Maine and is based on evidence derived from Comparative Jurisprudence and especially on evidence derived from the study of Roman Law (see Maine, "Ancient Law," ch. V.).

We think it well to emphasise the fact at this point that the theory that the State is a development out of the family, is of two forms, and that in the text above we have not committed ourselves to either of these forms. We have merely maintained that the State did originate in the family. The two forms of the theory in question are, first, that a single family *extended* itself into a large body of kindred, this being accompanied by a recognition of superiority in an individual or in some part of the greater family specially representing the original parent. The other is the theory that a family grew and extended, that then *aggregation* occurred of many of these large units under the headship either of one or of a body composed of the heads of each. The large units would in this latter case be the *gentes*, and it is maintained by some that the heads of these *gentes* were the *patres* of the old Senates, and that this was the original form of government. The fact is that the State may have originated from the family in both these ways. Aristotle's theory of the union of several villages in the State would seem to lay special emphasis on the *aggregation* form of the theory.

a long time afterwards, retain the outward forms of the family organisation, for instance, the monarch might be the patriarch of the community, and it would retain these forms for one particular reason, viz. on account of the strength and the rigidity which the family organisation imparted to society in the beginning, at a period, viz. when "coherence," as Spencer tells us, "was still small and the want of structure great." But in its nature and purpose the State is, as we saw, distinct from the family, and, therefore, it is to be expected that in process of time the State would find itself necessitated to put off the outward form of government that had come down to it from the family, and proceed to initiate and develop other forms of government more suitable to its own special aims and requirements.

Only in this way could the State have been enabled finally to put off the shackles that the rigidity of the family structure imposed upon it, and to obtain for itself freedom to expand in the directions and to the degree to which its own capacities entitled it. This transition from the family form of organisation to other more proper and more efficient because less rigid forms is thus described by Seeley,* "The authority of the pater-familias may or may not be primaeval and universal; but certainly in those cases where we are able to trace the history of States furthest back, the starting-point seems not to be a condition of universal confusion but a powerful and rigid family organisation. The weak were not at the mercy of the strong, because each weak man was a member of the family, and the family protected him with an energy of which modern society can form no conception. . . . In these cases, too, we are able to trace that the State was not suddenly introduced as a kind of heroic remedy for an intolerable confusion, but that the germ of organisation given by nature was developed artificially; that the family grew into something more than a mere family, that

* "Introduction to Political Science," p. 55.

it developed itself gradually so much, and acquired so much additional organisation as to disengage itself from the literal family which now re-appeared as an independent form within it, and that at last the conventional or fictitious family (*i.e.* the State) acquired a character of its own, until it first forgot and then at last denied and repudiated its connection with the natural family."

CONCLUSION—THE STATE A NATURAL INSTITUTION

From all this it is clear that the State is a natural institution, an integral portion of the design of nature, and not a product of chance or convention of any kind. It is natural, first, because it is founded on the most natural of all social institutions, the family. Secondly, it is natural because it grew out of the family *naturally*, the State being nothing more than the natural expansion of the family. As the family developed, without formally aiming at the State, it approached nearer and nearer to the condition of a State. The State was only the flower that marked the coming to maturity of the expanding family. It is, of course, true that the State might in a particular case take its rise independently of the family. It might in a particular case be brought into existence by a compact on the part of a number of citizens unrelated to one another by blood. But for the most part it must have arisen out of the family, and granted that the family expanded at all within the limits of its natural capacity, it had to expand into a State—there was nothing else into which it could expand. Thirdly, the State is natural because its end is natural, and the State is necessary for that end. Without the State, development would be impossible. Without it our natural capacities should have remained capacities merely. They could never have attained to their natural objects. All that has been attained in the way of knowledge and all that has been accomplished by human energy in the way of art, science, commerce, all, in fact,

that goes to make up our natural civilisation, with the exception of the merest rudimentary beginnings, all or nearly all of this has been attained through the instrumentality of the State. And that is why the State was from the beginning a necessity to man, why, granted that men aimed at development in any sense, the State *had* to appear. It had to appear because without it human perfection could not be attained, because without it man would be dwarfed and cramped on the mental side just as confinement in a dungeon would cramp him in his physical capacities. The State is our natural environment, and in it alone the fullness of our natural rational life becomes possible. "In the State," writes Mr. N. L. Newman, a man "breathes at last his native air, reaches his full stature and attains the end of his being." And as that which is necessary for our physical life is a natural necessity to man, so the State is natural, since, without it, development is impossible and the fullness of our natural perfection remains unattained.

The End of the State

The end of the State is the furtherance of man's natural welfare in regard to those things which cannot be attained by the activities of the family alone. And since as we saw the family is capable of attaining to no more than the ordinary daily necessities, or what Aristotle speaks of as "mere life," it becomes the function and end of the State to supply the things that are necessary for the better or more perfect, or the more developed life.* Let us see what this implies. It is a well-known maxim of economic theory that a man's interests are, generally speaking, looked after more effectively by himself than by others; and, therefore, as we have already said, it can be no part of the natural end of the State to promote the private interests of any individual

* τοῦ εὖ ζῆν.—as Aristotle expresses it.

or family, to take over control of the things that are strictly and naturally their proper interest, or what we speak of as their private good. But there is a common good as well as a particular or private good—a good of society as such as well as a good of the individual as such; and, just as the individual good ought to be entrusted to the individual, so the common good ought to be entrusted to, and indeed can be secured only by, the community or the State. This is the first and chief end of the State—the promotion of the common good or the good of the social body as such.

Let us briefly attempt to determine what is contained in this important conception. By the common good is not meant the common element in all individual goods or the things that all men in common require. For instance all men require food and drink, but these things it is not the business of the State to supply. The common good, as we said, means the good of society as such, and it is opposed to and contrasted with the good of the individual as such. For instance, it is the business of the State to protect the community from enemies without, and to furnish the machinery and prepare the organisation required for this end. Again, it is the business of the State to make laws for the community, to set up tribunals for administering justice, to establish a proper educational system, to regulate commerce so that the whole community may not suffer by the inordinate action of a few individuals. All these things are matters appertaining to the good of the community as such. Again, it is the business of the State to provide and maintain such an environment, physical and moral, as is required for the welfare of individuals, physical and moral, for though individuals may benefit by such an environment, it really is, properly speaking, a "good," of the whole community, and the providing of it is wholly outside the capacity of individuals. Men could not be healthy in unsanitary surroundings. Virtue can prosper only with difficulty

where the level of public morality is low and the atmosphere morally offensive.

In determining the end of the State, however, one ought not to interpret the common good in a narrow sense as including only the things that are in strictness common, that is, necessary for *all*. For there are many necessities that are not the interests of all, which yet are not to be regarded as private interests merely; they are public interests since they are necessary for the public of a particular place; and these things may also be regarded as a part of the common good and as falling within the end of the State. If a bridge is necessary, or if a railway is required for developing the resources of a particular district, the State may reasonably be expected to concern itself with such things and lend encouragement and even pecuniary aid—whether out of the general exchequer or the local revenues is quite another question.

But the question arises—is the promotion of the common good in the broad sense just given, which manifestly is the chief end of the State, also its only end? Has the State no concern with the individual good? To answer this question we have again to appeal to the problem of the ground and origin of the State, on which, as we said in the beginning of this chapter, depends our whole theory of its end and function. The State we have seen to be necessary for man because the individual and the family are not self-sufficient. Neither individual nor family can supply the things required for the developed life. The State can, and does, and is instituted in order to, supply them. The measure of her function, therefore, is to be found in the necessities of man and the inability of the individual and the family to provide these necessities. Anything, therefore, which is necessary, whether for the individual or for society at large, and which the individual or the family is not in a position to supply, may legitimately be regarded as included in the end of the State. Here,

however, we have to institute a narrower rule than that followed in our interpretation of the common good. The common or social good is naturally a function of society or the State, and, therefore, it was right that we should interpret this idea in the broadest spirit when determining the end of the State. In other words, in connection with the common good we may put as much on the State as it can possibly bear. But the individual good is naturally the concern of the individual only, and, therefore, in attempting to define the rights of the State in regard to the individual interest it is necessary to confine her rights within the narrowest possible compass. The State may certainly concern itself with the individual good, but only in so far as anything is in strictness necessary, and only in so far as the individual is wholly debarred from attaining the things necessary. It is no part of the end of the State to help an individual to amass a fortune, or to avoid financial failure. But the functions of the State do extend to the case of paupers and lunatics who are wholly unable to provide for themselves. Only in one case is it open to the State to help a failing industry, viz. where its maintenance is in some way a public necessity and subvention of some kind is absolutely required. It could never be allowed to spend public money on a business in the interest of the individual alone.

From all this we see how wide and all-inclusive are the end and office of the State. Ever since the seventeenth century writers have been formulating theories as to the end of the State, which on account of their restrictive character are spoken of as "limitative" or "minimising" theories,* and these stand in direct and

* Two peculiar views as to the end of the State which we have not found an opportunity for considering in the text are those of Seeley and Montesquieu ("De l'Esprit des Lois"). According to the former writer the State, being a natural growth, has no end We do not, says Seeley, speak about the object or end of a tree or an animal. According to Montesquieu each State has its own proper end, consisting of the main object at which each State habitually aims. The end, *e.g.* of England is political liberty; of Athens, culture.

marked contrast to the broad and essentially reasonable theory advocated by Aristotle. By some the State is regarded as possessed of one function only, viz. to protect individuals from aggression on the part of other individuals within the same community,* or, what is practically the same idea, to determine the limits within which human activities ought to be restricted if they are not to hinder the activities of others.† Certain writers‡ also, though favouring a wider function than this (for instance, the promotion of the best life) would yet limit the means which it is open to the State to utilise for this purpose to the negative function of "hindering hindrances" to the best life. How different in every essential is Aristotle's exposition where the end of the State is represented as in the first place, positive like the State itself, and in the second place as co-extensive practically with life, or at all events with the developed life.

And this, we believe, is the view which alone harmonises with reason and with fact. For, first, the State came into existence in order that man might become possessed of those things which could not be obtained by individual effort, and the end of anything ought to be as wide as the necessities that give it rise. Again, the State has never itself confined its operations within the narrow sphere assigned to it in these limitative theories. It has not only intervened to prevent injustice and to hinder hindrances to development, but it has itself assumed offices of immense magnitude lying wholly outside the sphere of litigation and justice, and has undertaken work that could in no sense be regarded as negative or

* *e.g.* Locke, Hobbes, Kant. The State so limited in its functions is sometimes spoken of as Rechtsstaat, or the legal State, or the *police* State. Aristotle makes special reference to this theory in "Politics," III. 9, 6—"nor does the State exist for the sake of . . security from injustice."

† Spencer, "The Man *versus* the State," p. 105. In "Justice," p. 23 he declares that the end of the State consists in preventing interference with the carrying on of individual lives.

‡ Bosanquet, "Philosophical Theory of the State," p. 190.

preventative. And what the State normally does may, as a rule, be regarded as consonant with, or rather as a part of its natural function. The State, therefore, has, in its own operations, set at nought every limitative theory, as cramping and hindering it, and as falling short of its own capacity for good, and we believe it is for this reason more than any other that political theorists have of late years shown so marked a tendency to discard what is called the modern for the more ancient theory of the end of the State. "As to the question" (of the limits of State action), writes Sir Frederick Pollock,* "I do not think it can be fully dealt with except by going back to the older question—what is the State for? And although I cannot justify myself at length I will bear witness that for my own part I think this is a point at which we may well say 'Back to Aristotle.'" It is this broad and only practicable view of the end of the State that will be allowed to influence us in the solution of the problem now to follow.

OF GOVERNMENTAL INTERFERENCE

From what we have said in regard to the end of the State, it is easy to deduce in general terms the proper limits of the right of governmental interference with human liberty, since the extent of this right is determined by the end of the State. (*a*) The State, subject to a certain exception to be mentioned presently, can interfere in the free action of individuals in so far as the general or public interest requires. (*b*) The State can interfere with human liberty even in the interest of individuals, wherever an individual cannot reasonably be supposed to look after his own interest, but, then, only in matters of supreme importance.

(*a*) The free and unrestrained pursuit of their own interests by private individuals will sometimes lead

* "History of the Science of Politics," p. 124

either to the neglect of things essential for the community or even to the positive infliction of harm on the whole community or a large part of it. In these cases interference by the State may be imposed as a duty, or may at least be regarded as falling within the rights of the State as determined by its end. Thus, landowners might easily be led to neglect the cultivation of forest land, on account of the slow returns which afforestation affords; in that case, since timber is necessary for the community, the government would be justified in insisting on some of the land being devoted regularly to the cultivation of timber. It may also interfere to prevent the too rapid depletion of mines or fisheries, to terminate disputes, even compulsorily, between employers and employed, or for any purpose connected with the general good.

(*b*) Again, though the State should not act as a substitute for the individual, taking over the care of his private interests, as a mother cares for her child, still sometimes there is question of genuine inability on the part of individuals to protect themselves against others or against themselves, and in these cases the State should lend its aid, at all events where the number of individuals affected is so great that their combined interests might be regarded as public and not as private. The State, for instance, might interfere so as to protect the people from the sale of spurious articles, prohibit medical practice on the part of quack doctors,* suppress the sale of very injurious intoxicants, close unsanitary meat-shops, exclude unqualified apothecaries from business, etc., etc., for though in all these cases it is, strictly speaking, the fault of the individual if he is injured, still a certain inability to provide for themselves may be pleaded, an inability due either to the strength of temptation, or to poverty, or to innate carelessness or stupidity; and in such cases, therefore, it falls within the rights

* Or, as Sidgwick says, at all events debar them from the right of demanding fees.

of the State to provide the things that exceed the capacity of the individual and the family.*

We said in the course of our argument that the State has the right of interfering with the liberty of the subject in the interest of the community, but subject to an exception afterwards to be mentioned. That exception, we now go on to explain. The State has no right of interference in the essentials at all events of those rights which are fundamental in human nature, which precede the State, and are the foundation on which the State itself is built. These rights are a man's own right to life, and a man's right to marry and to found and rear a family. For no reason could the State prevent a man from obtaining the necessary food. For no reason could the State prevent a man from marrying and founding a family. The first of these two statements will scarcely be questioned by anybody. The second will in general be allowed. In general, it is admitted that every man has a right to marry and to found a family without interference from the State. But, at times, views have been defended as to the right of the State to control the number of marriages and to limit the rights of parents in the rearing of their children, which are undoubtedly incompatible with the most essential features of the rights of a man over himself and his family. Of these views a brief exposition and criticism will be attempted in the two following sections.

The alleged right of the State to restrict the number of marriages.

" In a country," writes Mill,* " either over-peopled or threatened with being so, to produce children beyond a very small number with the effect of reducing the reward of labour by their competition is a serious offence against all those who live by the remuneration of their labour."

* " On Liberty," p. 64.

And again—" The laws which in many countries on the Continent forbid marriage unless the parties can show that they have the means of supporting a family do not exceed the legitimate powers of the State, and whether such laws be expedient or not (a question mainly dependent on local circumstances and feelings) they are not objectionable as violations of liberty. Such laws are interferences of the State to prohibit a mischievous act—an act injurious to others, which ought to be a subject of reprobation and social stigma even when it is not deemed expedient to super-add legal punishment. Yet current ideas of liberty which tend so easily to real infringements of the individual in things which concern only himself would repel the attempt to put any restraint upon his inclinations when the consequences of their indulgence is a life or lives of wretchedness and depravity in the offspring, with manifold evils to those sufficiently within reach to be in any way affected by their actions."

For two reasons it is maintained that it is within the power of the State to restrict and regulate the number of marriages—*first*, because of the effect on society—*i.e.* either the food supply will fail, as Malthus claimed, or wages will be disastrously reduced as Mill maintained; *secondly*, because of the effect on the children born of these marriages; these children, it is maintained, will be born into poverty and ill-health, and in general into an existence which, instead of a blessing, will be a burden to them all their lives. Let us briefly attempt to examine these reasons.

The old Malthusian doctrine based on the hypothesis of a limited food-supply, scarcely needs to be seriously considered now-a-days, so much has the number of its adherents been reduced, so clearly has it been disproved by actual events, and so far is it opposed to what we now know of the conditions necessary for a continued food-supply. It is disproved, first, by actual events. The population of the world has gone on increasing,

and yet the food supply has not failed us, and if difficulties are sometimes felt in regard to it, these difficulties are brought about either by insufficiency of labour, and, therefore, as a result of under-population rather than of over-population, or through bad organisation. At one time the world was disorganised through want of proper connection between the different markets of the world. The opening up of all the markets, and their better connection through increased transit and other facilities, have made it clear that food can always be made available where it is required, and that no matter how great the rate of consumption, production can always be faster still. Indeed, taking things as they are, the danger of over-population if ever it existed would seem to become more and more remote as civilisation increases, and as industry and the efficiency of nations grow. The enormous increase that has taken place in the number and extent of cities, the speeding up of industry, not to speak of the greater ravages produced by modern warfare as compared with the old, all these factors are likely to set up an opposing danger to that considered by Malthus, the danger, viz. of under-population, or the general deterioration of the race; and if the balance is to be kept between loss and gain so that the population may be maintained at the normal level, it can only be by multiplying marriages as much as possible, and more especially by encouraging a habit of early marriages.

Again, we said that the doctrine of Malthus was disproved by what we now know of the conditions necessary for a continued food-supply. The rate of increase in the food supply is, according to Malthus, necessarily lower than the natural rate of increase in the population. That theory, if ever it accorded with truth, a supposition which is not supported by history in the past, is directly at variance with the principles of production under modern conditions. Under the old conditions, production was almost wholly a function

of the natural forces only. The human agent could get out of the earth only what already he found existing in the earth through the operation of the ordinary forces of nature. He could not add to the efficiency of these forces. Under modern conditions the extent of production is a function to a very great extent of human efficiency. It depends nearly, if not quite, as much on the brains of man as on the natural productiveness of the land. Operating with the natural forces inherent in the earth there are now engaged, in the *production* of the food-supply of the world, other forces which are purely human and mental in character, a knowledge of biology, of chemistry, of pathology, whilst the preparation and distribution of that food supply are almost wholly dependent on human knowledge, ingenuity, and skill. For these reasons it is highly important for the continuance and increase of the world's food-supply, and particularly now that land everywhere is being subjected to the process of intensive cultivation, that the human element should not be wanting, that men should be plentiful, that wherever there is natural wealth to be produced there mankind should abound. Human energy and ingenuity can produce food much faster than the human appetite can devour it. For increased food supply what is wanted is increased supply of human hands, not a smaller number of mouths consuming what is produced.

We now come to the consideration of Mill's two arguments. The supply of labour, he tells us, is to be kept low if wages are to be high. What a cruel alternative is here left to the workman, and how far opposed to the kindly economy everywhere evinced by nature in its dealings with men. The poor man, in Mill's theory, must either remain single or starve. To Mill the other alternative does not seem to have occurred, viz. that if wages are insufficient it is the duty of capitalists to forego some of their own profits and to pay a better

wage. The theory underlying Mill's argument, that the "wages fund" of a nation at any time is a fixed sum and incapable of increase, is now quite obsolete.

To Mill's second argument we attach much greater importance, not because of its greater truth, but because it is an argument which finds frequent utterance in present-day discussion on the topic of marriage. Unless, says Mill, the number of marriages, particularly amongst poor people, is regulated by the State, children will be born into an environment which is incompatible with welfare whether in the physical or the spiritual order. They will be poor, miserable, sick, maimed, and vicious. Both the children themselves and society at large will be the unfortunate sufferers.

Our answer, which will be brief, will be given under distinct headings as follows :—

(1) The State has no more right to prevent marriages amongst the poor than to put the poor out of life altogether. *Individual existence and the institution of the family precede the State*, and, therefore, though the State may issue regulations with regard to marriage, it has no right to prohibit marriage totally to any man or class of men.

(2) To interfere with marriage, to prevent it, because of the poverty or misery of the parties, is to interfere with, and stop up the fount of life, to endanger the continuance of the race at its very source. It will be said—but do not the natural impediments themselves place conditions on freedom in regard to marriage, and do not, therefore, they also interfere with life at its fountain source? We answer—the fountain source of life, like any other fountain source, has need to be interfered with in the sense of cared for and guarded, so that it may remain pure and undefiled, that is, so that it may remain a fitting means for the promotion of its natural end, which is the continuance of the race. And the natural laws of marriage, as also the natural impediments, are all laws designed to promote that end. But

the kind of interference advocated by Mill is interference for an opposite purpose, interference, viz. for the purpose of preventing increase, preventing the end of marriage, and its criminal character is not in the least modified by the fact that the births that it is designed to prevent are births that occur in unfortunate circumstances. Interference which runs counter to the end of marriage can never be justified. The attempt, therefore, to prevent what are spoken of as "luckless marriages" is most unnatural and opposed to the very idea of marriage, and to the welfare of the race.

(3) The statement of the old philosophers that existence is better than non-existence is not to be regarded as a mere empty metaphysical assertion; it is the statement of a highly important practical truth and is attested to both by reason and experience. To every man whether poor and miserable, or rich and contented, existence is a very great good; in proof of which we may mention the fact that every man and animal will fight against annihilation, and struggle by natural instinct to remain in existence, even in spite of the misery and pain which existence often involves. And just as present life and existence are better than subsequent non-existence, so they are also better than previous non-existence and better than non-existence absolutely. To say, therefore, that an injury is done to a child because he is brought into the world in miserable surroundings or with little prospect of health or happiness, is in one sense true and in another sense absurdly false. It is certainly better to bring children into existence under favourable auspices than under unfavourable, but, on the other hand, the good which is to be contemplated in marriage is the good of the child, and to the child, however onlookers may pity his sad fate, existence is certainly better than non-existence. This argument will be found to be fully confirmed by the consideration now to follow.

(4) In all existent things there is much perfection

and much welfare rendering existence desirable; the imperfections and the wants are much fewer than the perfections and the attainments. Much, therefore, as we sympathise with the wants of the poor, we cannot but feel that the picture sometimes drawn of their misery is to a large extent imaginary and untrue. Even the poorest people not only have their moments of contentment and amusement, but their habitual condition is often one of very happy contrast to that of many of the self-indulgent rich whom nothing can content. The poor, and even the so-called miserable, are often happy, not only in their existence but in their surroundings, and though it is the duty of the rich to relieve them of their burdens, nevertheless the life of the poor and miserable is not to be considered as all a burden. Miserable as it is, it is welcome to them, and to have deprived them of it would have been to do them a great evil.

(5) What ground is there for believing in any particular case that the children of poor people will not one day become rich, or at all events, that they may not one day turn out to be comfortable and respectable citizens? And what right has the State to deny to such children their chance in life—for that is, in effect, what State interference in the circumstances comes to? If the State regards it as a duty to prevent marriages that *may*, or even probably will, result in criminal or destitute children, then it should also deem it a duty to prevent the marriages of the idle or profligate rich whose children will almost certainly be idle and profligate and a trial to the community. And if it is right to give the latter his chance in life, it is right to give the former his chance also. Speaking on the latent energies of the poor, and the possibility of an apparently luckless marriage being turned by the parties, or by nature, to good account, Bernard Bosanquet writes as follows:* "This is a case in

* "Philosophical Theory of the State," p. 68.

which authoritative interference (except on account of very definite physical and mental defects) must inevitably defeat its object. No foresight of others can gauge the latent powers to meet and deal with a future indefinite responsibility; and the result of scrupulous timidity in view of such responsibilities is seen in the tendency to depopulation which affects that very country from which Mill probably drew his argument.* To leave the responsibility as fully as possible where it has been assumed is the best that law can do, and appeals to a spring of energy deeper than compulsion can reach."

(6) The prevention of marriages in cases in which the means of subsistence seem to be wanting will not secure the end desired. If marriage is prevented illicit unions will be formed, and the children born of them will be, of all children, the poorest, inheriting all the misery, and none of the protection, the care, and the love, to which legitimate children, however poor, have a legal right, and which will in most cases be faithfully accorded to them.

The rights of the State in regard to education.

As we saw, the end of the State is to provide for the higher or more developed "good" in so far as its attainment exceeds the capacity of individuals and the family. Let us see in the light of this principle what is the position of the State in regard to education. For the sake of simplicity we shall here confine our discussion to the case of primary education, or the education of children.

Education is essentially a part of the process of rearing. By rearing is meant the training of the child, both in body and mind, and education is that part of rearing which relates to mind. And, since the rearing

* Alas! in this year 1915, *quomodo ploravit Rachel filios suos*—her unborn children, the bravest of the brave, *cheated* even of life and existence! In her day of trial how much France must have desired their service and their devotion!

of the child is primarily and essentially a duty and a right of parents, so the education of the child is primarily and essentially their right. The parent may hand over the child to be nursed by another, or taught by another, whether a private teacher or the State, but the final responsibility to nature and to the Author of nature falls on the parent. The employed teacher is in nature's eyes only the deputy of the parent.

Now whereas, generally speaking, parents can by their own united efforts provide for the bodily welfare of their children and in some measure can provide also for their mental welfare or their education, to a great extent and normally this latter side of the process of rearing is something that exceeds the means, the capacities, and the opportunities of parents; and it is for parents exclusively to determine how their own efforts in these circumstances are to be supplemented by the aid of others. If by means of combination amongst many families it is possible to maintain a private school, conducted according to a programme either drawn up or at least approved by themselves, then it is their right to maintain such a school and without interference from the State. In two cases only would interference be possible, viz. where it is evident that the child is not really being educated, for then an injustice is being done to the child, and the State could interfere on its behalf just as it can interfere if a child is not being properly fed. But such interference is, in general, invidious, and so far as education is concerned could be justified only on very rare occasions. The other case arises in connection with the requirements of the common good. The good of the State might require a certain standard of education, higher than that normally given, and the State could legitimately insist upon this standard being attained by all.

As a rule, however, parents cannot afford to maintain and equip schools like those just mentioned. The maintenance of an efficient school is costly and trouble-

some, and, therefore, parents have a right to call upon the State to provide the opportunities for education which they themselves cannot afford to give, and the State is under an obligation to provide these opportunities, *i.e.* to build and equip schools, to pay the teachers, to maintain the schools, in so far at least as these things are beyond the means and the capacities of parents. But even where education is fully provided by the State, it has to be remembered that the first right and the final responsibility are the parents', and that in providing the means of education the State is only fulfilling its natural function of supplementing the efforts of parents in regard to the requirements of the developed life. The State, therefore, is not justified in wresting the child from the parent or ignoring the parent in the domain of education. It is not justified in forcing on the children a system of education which is unacceptable to parents, or a system to which they conscientiously object. In certain matters, of course, the State is free not to consult the parents, those matters, namely, in which the parents are not supposed to be capable of judging aright, as for instance, whether mathematics should be taught in the school, and to what extent, and according to what methods; but there are certain matters of which parents are quite competent judges, or at all events, of which the State and the public authorities are not the appointed judges, for instance, religion, and in these connections the advantageous position which the State occupies through being necessary to the parent, gives it no right to force a system of education or a set of principles on the children, of which their parents disapprove. What, therefore, is the duty of the State in the circumstances in question? The State may, of course, provide its own schools, conducted according to its own methods for all those who are willing to make use of them; but it should provide also schools approved of by parents, and equip and maintain them at the expense of the

State, provided, of course, that the requisite number of families is present to constitute a school. In that case, as in every case in which public money is devoted to any work, the State enjoys a full right of inspection and examination so that the public may have some guarantee that its money is being properly applied. But the fact, we repeat, that the State does provide public money for education, and that consequently it is in the advantageous position of being necessary to parents, no more gives it a right to take the children out of their parents' hands and educate them according to its own ideas exclusively, than its necessity in the interests of public order bestows on the State a right of forcing a particular kind of dress or food or habitation on all those who are in the unhappy position of having to appeal to it for aid against thieves and robbers. Where reasonable aid is asked of the State, aid should be given; but in seeking for such aid men are not to be regarded as forfeiting or surrendering in any way the rights and liberties which nature bestows on them as human persons, or as parents entrusted with the duty of caring for their children. Nobody would, of course, expect the State to provide schools for every handful of children whose parents entertain conscientious objections to the system that is actually provided by the State. But wherever a multiplicity of schools has to be provided, the State is bound to make special provision for any large and important body of parents making common appeal to the State, and resting their appeal on the same group of conscientious principles or difficulties.

Nor should the State complain about the multiplicity of systems that may thus be generated. For, in the first place, the groups requiring and deserving (from the point of view of numbers) special treatment are never many. And in the second place it is a good thing that the whole educational system of a country should not be cast in a single mould. The single-mould system advocated by State monopolists in the domain of educa-

tion is bound to hamper and repress initiative and originality, and even that spirit of freedom which every modern government either genuinely aims at, or pretends to aim at, encouraging amongst its subjects. Diversities of spirit are widely encouraged in modern times in the domain of university education. There is no reason in the world why similar encouragement, always, of course, supposing that the State is given the free exercise of its right of inspection and examination, should not be extended to the elementary sphere as well. Even such a strong advocate of governmental interference in matters moral as John Stuart Mill was fully alive to the advantages attaching to freedom of development in the sphere of elementary education. "All that has been said," he writes,* "of the importance of individuality of character, and diversity in opinions and modes of conduct involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another; and as the mould in which it casts them is that which pleases the predominant power in the government. . . . . in the proportion as it is efficient and successful, it establishes a despotism over the mind leading by natural tendency to one over the body. An education established by the State should exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence." We do not consider that Mill has here succeeded in setting forth the entire obligation of the State in regard to education. The State should not merely set up a number of competing schools with others, leaving these others to depend upon themselves. The State should be prepared to extend encouragement and pecuniary aid to all those schools that need and deserve it. But the testimony of so great an authority is valuable as showing the injury

* "On Liberty," p. 63.

done to the interests of education itself by any attempt to bring the whole education of the country under one rigid system, or (we may add) by declining to support in any way those schools in the case of which, whilst fully acknowledging a right of inspection and examination on the part of the State, parents still insist on exercising some discretion in matters that, to their mind, appertain, not to the State, but to themselves and to the appointed guardians of religion.

APPENDIX

The Social-Contract Theory

We have to distinguish two classes of social-contract theories, first, the theories advocated by Hobbes, Rousseau, Locke, Kant, and Spinoza, according to whom the authority of rulers is grounded on contract exclusively; secondly, the theory of certain scholastic writers, notably Suarez and Card. Bellarmine, who regard the State as grounded on nature and the Author of nature, the State being a necessity of nature, but who consider that political authority originally vested in the people as a whole, and could only have been conferred on rulers through a compact between the members composing the community. The first form of the theory we may speak of as the social-contract theory proper: the second is only a very modified form of the theory. We shall therefore, in the first instance, analyse the social-contract theory proper as developed by Hobbes, its chief exponent, adding a brief criticism; then we shall say a few words on the theory standing in the names of Suarez and Card. Bellarmine.

In his well-known work, the "Leviathan" (1651), Hobbes draws a picture of what he calls the "state of nature," *i.e.* the condition in which man found himself before the rise of the State, and he describes also the manner in which this condition of nature gave place to the social condition of man under the State. He describes first the psychical condition of man in the "state of nature," then his moral condition. The *psychical* characteristics of the community were as follows: in the State of nature all men were equal, not in the juridical sense of having equal rights, for at that

period, according to Hobbes, there were no rights, but in the sense of possessing equal capacities and powers. There was no ruler then, and men took advantage of the absence of a controlling power to use their equal powers to the best advantage they could secure, even to the injuring of one another. In fact, the condition of nature was a condition of universal warfare—"such a war as is of every man against every man." This condition of warfare did not, indeed, entail continuous actual fighting. It consisted in actual fighting at times, a permanent known disposition to fight, and the absence of all assurances of peace. "For war consisteth not in battle only or the art of fighting but in a tract of time wherein the will to contend by battle is sufficiently known, and, therefore, the notion of time is to be considered in the nature of war as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain but in an inclination thereto of many days together, so the nature of war consisteth not in actual fighting but in the known disposition thereto during all the time there is no assurance to the contrary. . . . Whatsoever, therefore, is consequent to a time of war where every man is enemy to every man the same is consequent to the time wherein men live without other security than that which their own strength and their own invention shall furnish them withal. In such condition there is no place for industry because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation nor use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth; no account of time, no arts, no letters, no society, and, which is worst of all, continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish, and short."

"It may peradventure be thought," Hobbes continues, "that there was never such a time nor condition of war as this, and I believe it was never generally so all over the world,* but there are many places where they live so now."

* Hobbes, therefore, does not claim historical reality for this "state of nature" as a condition of the whole human race. Neither does Kant: the social compact and the preceding state of nature are, he says, if they ever existed, only the starting-point in our explanation of the juridical State, a method in other words of conceiving the place of the State in society, its functions and its powers. On the other hand historical reality is claimed for the state of nature by Locke and Spinoza. According to Locke it was an exceedingly

Besides, " in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies and in the state and posture of gladiators, having their weapons pointing, and their eyes fixed on one another."

Hobbes now proceeds to describe the *moral* condition of man in the " state of nature." " To this war of every man against every man this also is consequent that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body nor mind. . . . They are qualities that relate to men in society not in solitude. It is consequent also to the same condition that there be no property, no dominion, no 'mine' and 'thine' distinct, but only that to be every man's that he can get, and for so long as he can keep it. . . . Thus much for the ill condition which man by mere nature is actually placed in, though with a possibility to come out of it."

In the state of nature, Hobbes proceeds to show, men are moved by a single all-powerful impulse, that, viz. of self-preservation; but from this impulse springs another which quickly reacts on the very condition of nature in which it rises, and leads on to another and opposed condition. This derived impulse is the impulse to seek for peace as a means to self-preservation. It is from this impulse that the social-contract sprang—a contract devised to end the condition of primitive warfare with all its attendant inconveniences. This contract was a covenant of every man with every other to place all their liberties in the hands of some one man or body of men to whom all should be subject and who should direct the destinies of all. Its terms were: " I authorise and give up my right of governing myself to this man or this assembly of men on the condition that thou give thy right to him and authorise all his actions in like manner." Thus, in Hobbes' theory, the power of the governing authorities is only the aggregate of the powers

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shortlived condition, for it was a condition which men would be inclined to escape from the moment they came into relation to one another (" Treatises on Civil Government "). In Spinoza's view (" Tractatus Politicus," p 293) the Jews " gave up their natural rights to Jehovah in terms of an express contract " (*Exodus* xxiv. 7). The theory defended by Rousseau is that the state of nature is *hypothetically* an historical reality, *i.e.* it is the condition in which man must have existed unless some act of Divine intervention in the very beginning of history prevented it.

possessed by individuals, their power, namely, of governing themselves. The ruler as bearing their powers carries in himself the persons of all his subjects. In obeying him the subject really obeys himself as existent in the ruler. This social-compact, Hobbes remarks, being once effected, is irrevocable.

The qualities of the *sovereignty* enjoyed by the ruler are determined by the conditions of the social-contract. In one place Hobbes maintains that sovereignty is an absolute power in the sense that a ruler has no obligations towards his subjects, and consequently that rebellion against the sovereign could never be lawful. This doctrine of absoluteness, however, is modified elsewhere with, we consider, little care for consistency. Though the sovereign, he tells us, has absolute rights within the terms of the contract, yet these terms themselves impose limitations on him that are of immense importance in defining the juridical relations obtaining between ruler and subject. First, a sovereign may not interfere with his subjects beyond the terms of the convention: he may interfere, therefore, only for their preservation and defence; secondly, his sovereignty lasts only for as long as the end is attainable for which it was conferred, *i.e.* as long as he is in a position to protect his subjects. When that power ceases, all obligations to him have disappeared.

In treating of Hobbes' doctrine of sovereignty we have gone beyond the subject of the present chapter; but we have done so in order that the reader may have a clear and connected view of Hobbes' whole system,* and because we

* The other social-compact theories are simply variants of that of Hobbes. In their main principles they are all derived from the Leviathan; but the points of difference are interesting. We shall enumerate these differences under special headings as follows:

(a) *The state of nature.* Here Rousseau ["L'origine de l'inégalitè parmi less hommes" (1751) and "Du Contrat Social" (1762)] distinguishes two periods; first, a period of the equality of all with all, not in Hobbes' sense that the sum of their powers mental and physical was equal, but in the sense that everybody had all that he required for his life. It was a condition, too, not of warfare but of Arcadian peace. As yet language had not been developed for there was no need of language. As yet the family did not exist except to the degree in which it exists amongst the animals, *i.e.* the mother just suckled her young. It was a period of ease and contentment for all. Later on, inequalities arose and the war of all with all. The first great inequality appeared with appropriation of land. Thence arose division of labour and all the evils that afflict society. Locke also ("Two Treatises on Civil Government," 1689) describes the equality obtaining between primitive men, but in a much more natural way

may not have an opportunity later of discussing his particular theory of sovereignty.

Criticism.

(1) It is possible to view the theory of the "state of nature" depicted by Hobbes in two ways: either as an attempted historical survey of the actual state of things that preceded the appearance of the State, or as an account of the conditions that would prevail if there were no State and no ruling political authority set over peoples to preserve order and enforce the laws of justice amongst them. The first would seem to be the purpose aimed at by Rousseau, Locke, and Spinoza—the second by Hobbes and Kant. Now it will not be necessary here to attempt to criticise the theory of the state of nature regarded as a survey of the actual early history of man, since that theory is now disproved utterly by what is known of the origin of the State, and it is not now regarded as worthy of consideration by any school of writers. Before the State appeared, primitive men were organised (as primitive societies are organised even now) into societies held together by a force which was far stronger than that of the unifying forces present in any

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than either Hobbes or Rousseau. It was a period of juridical equality, *i.e.* all men having the same faculties with the same ends, they were equal in the sense that one was not subject to another. Juridical inequalities arose out of the necessities of society. Kant ("Rechtslehre," 1796) defends the equality of all in the sense that all have equal initial rights to the whole world of possessions.

(b) *The condition of morality in the state of nature.* Under this heading important differences arise. Like Hobbes, Rousseau also maintains that in the "state of nature" there existed neither law nor rights nor distinctions of good and evil. Locke, on the other hand, explains that the condition of juridical equality, obtaining between individuals, itself gave rise to a law of justice which was in effect that no man should use another as means to his own pleasure for that would be to treat him not as an equal but as a subordinate. There existed also a right of property since it is the clear intention of the Author of nature that her possessions should be used for the best convenience. The chief title to property was labour. Kant's theory is exceedingly interesting. In the state of nature men had rights as against one another, and it was to defend these rights that the State was brought into existence. But in the state of nature rights were "provisional" only, *i.e.* they were of no use to men before the State came into existence (p. 158). The function of the State when it did appear was not that of creating rights. The State was a "juridical union constituted under the condition of distributive justice" (p. 157), for the validating, defining, and defending of rights.

(c) *The Social-Compact.* Rousseau does not, like Hobbes, represent the social-contract as necessary. On the contrary, it was, he says, a

State, viz. the force of the blood-tie and of the authority either of the *pater-familias*, or of the combined heads of the tribe. In many cases the whole community would consist of a single family composed of parents, grandparents, children, grandchildren, and the collateral relations—all governed by a patriarch; in another case three or four of these tribal units would combine under the joint rule of their numerous heads; but at no period was humanity made up of isolated individuals, living under no ruler, and aiming at no sort of common good. The tribes that constituted the earliest societies were organised under their respective heads not only as families but also as incipient States.

This, as we said, is the clear lesson taught us by all recent investigation into the origin of society, and, therefore, in so far as the theory of the state of nature is followed at all, the form which it now assumes is that of a theory of what the community would be if there were no State, and a theory, therefore, of the functions which, it is supposed, are proper

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device whereby the rich, finding that their possessions were in jeopardy, fooled the poor into agreeing to the formation of society for the protection of property in general. The compact when it was made was two-fold; first, the fundamental compact, whereby the people formed themselves into a single community each agreeing to "throw into the common stock his person and all his faculties, under the supreme direction of the general will (*volonté générale* as opposed to the *volonté de tous* or the sum of the individual wills); second, that whereby the ruler is designated. A similar distinction of contracts is described by Kant, and he points out that in neither can a man be properly said to surrender his freedom, rather what he does is to surrender his wild lawless freedom in order to find again his proper and regulated freedom in a civil society. He also points out that the obedience given to the ruler is really given to one's self, as a part of the ruler, the ruler representing and personating the whole of society.

(d) *Sovereignty.* In Rousseau's theory the *general will* is sovereign, not the *volonté de tous*. Only in one way can one make sure of the rule of the general will, *i.e.* by excluding the operation of parties from politics. Then only will differences really neutralise one another and the common mind prevail. The general will may, of course, appoint representatives. But it cannot really be represented. It cannot give away its sovereignty. It should, therefore, legislate directly and not through representatives. Sovereignty has one function only, that, viz. of legislation. In Locke's theory also it is the people who are represented as truly sovereign. The king if he acts not in the interest of the people may be dethroned or rather has already dethroned himself. In Kant's theory the people are said to be the original sovereign. But they can delegate this sovereignty. Once it is delegated, however, no course and no defect of the sovereign can absolve a subject from obedience. Rebellion under any circumstances is, therefore, a crime. But the execution of a monarch is the greatest of all crimes—it is the unforgivable sin of the theologians.

to the State. Without the State it is maintained there would be neither rights nor duties, nor justice, nor "mine" and "thine," nor law of any kind, and, therefore, the condition would be the war of every man with every other. Now this theory of universal war and universal *unmorality* is wholly imaginary and wholly false. In the period that preceded the appearance of the State, individual was not at war with individual, because, being members of one family, their interests were largely the same. Each community consisted, then, of one immense family. Wives or husbands were, of course, taken from outside. In some cases the wife came to live with the man's family; in other cases the man went to live with the woman's family. But in every case the community constituted a single family unit. Their interests, therefore, were common, their land was common in the sense that it was vested in the family or the head of the family, and, as one eminent modern sociologist tells us, they defended one another in case of aggression from without with a fierceness and determination that are unknown to-day. Within the family community, if disputes arose, they were decided by the head, *i.e.* the patriarch. The patriarchal theory * of ancient society or something akin to it is now universally accepted. As Sidgwick explains, it "emerges spontaneously" from what we know of the family basis of society in the past. The theory of the war of all with all is, therefore, far less applicable to the early period here in question than to the condition of society to-day.

Again, it is absurd to say that before the State appeared there were neither rights, nor laws, nor "mine" and "thine." In that period men were ruled by the natural law just as they are now. There are innumerable laws and rights that have no dependence on the State, *e.g.* the law of fidelity between husband and wife, the right of the parent to the respect of the child and of the child to the support of its parents. Before the State arose there was also a "meum ac tuum." A man had a right, at least, to the things produced by his labour. In the primeval period, therefore, it is untrue to say that rights did not exist. Indeed, as Kant remarks, unless in that period there existed rights of justice the State would not have been deemed necessary for enforcing these rights, and it was the enforcing of these already

* The word is not used here in its strict sense as opposed to the matriarchate. We merely mean the theory that the bond that held societies together in their earliest stages was that of the blood-tie, and that the earliest societies were ruled by the family heads.

existent rights that, according to many defenders of the social-contract theory, was the primary and essential purpose of the State in its first beginnings. Neither is it right to say that before the State arose there was nothing to secure the enforcement of men's natural rights. The reason and conscience of man must always have been operative, and where these were not sufficient there was available the strong rule of the pater-familias, which, as against the individual delinquent, could count in every case on the loyal support of the whole tribal community.

(2) Then as to the idea of the social-contract. We have already pointed out that States may have arisen *in particular cases* in ancient times as a result of contract, just as contract gave rise to the Orange Free State in recent times. But we have to remember that a contract-made State would be exceedingly difficult in the primeval period, first, because in that period men had no experience of the State and no idea of what it was like, whereas now there are States of every model to be copied; and secondly, because in the primeval period it would have been difficult to superimpose on the family organisation another organisation independent of the first and ruled by a different head. To primeval man the superseding of the great tribal organisation based on the permanent link of the blood-tie, by another organisation based on a mere temporary will-act of the citizens, would seem a wholly superfluous and absurd procedure.

The founding of a State by contract would, therefore, be exceedingly difficult in ancient times. On the other hand, the expansion of the family into the State was a normal, a necessary, and a natural procedure. The family had to expand into the tribe and the tribe, granted that it progressed at all, had to expand into the condition of a State. It is for this reason that Aristotle speaks of the family origin of the State as "most in accordance with nature" and, therefore, as the normal manner in which the early States must have appeared. Where, therefore, the authors of the social-contract theory err is in representing as normal and universal a procedure which, if it ever existed, could never be more than accidental and exceptional.

But they are guilty of a further and more important misrepresentation still. As we have already pointed out, the authors of the theory of a primeval "state of nature" in which neither law nor rights obtained, for the most part do not regard this condition as an historical reality. Neither do they consider the social-compact as an historical reality. Their sole purpose in developing this second part of the

theory is to show that the authority of the State is based upon the consent of the citizens. Now in the next chapter it will be shown that the authority of the State, even where the State is founded, as in exceptional cases it has been founded, by compact on the part of the citizens, is never *based* or grounded upon such contract, but on nature, *i.e.* the natural necessities which it is the essential purpose of the State to supply. The State may in particular instances take its rise, as marriage and the family take their rise, in contract, but the authority of the State, just like the authority of the family, is grounded on nature, on the natural position of the ruler in one case and the parents in the other ; and, therefore, the theory of the social-contract is wrong, not only as an historical account of how the State must necessarily have arisen in the beginning, but also as a theory of the ground of political authority. We shall see in the next chapter that the social-contract theory is based entirely on a confusion of two distinct conceptions—the conceptions, viz. of the *ground* of authority and the *titles* of authority. Social-contract is in some cases a title of political authority ; it is never the ground of political authority ; still less can it be represented as the essential and exclusive ground of authority in every State.

(3) Finally we may be permitted to remark that to speak of primeval man, in whatever condition he found himself, as *par excellence* the "state of nature," is incongruous and unscientific. The natural horse, *par excellence,* is the horse that is fully up to nature's standard, with all its capacities developed and its nature fulfilled. So "natural man," *par excellence,* is man at the high level marked out for him by his natural capacities, man at his best and greatest. "What each thing is," says Aristotle (Pol. I. 2, 8,), "when fully developed, we call its nature."

Suarez and Card. Bellarmine.

A brief word now on the theory of social-contract advocated by Card. Bellarmine (1542–1621) and Francis Suarez (1548–1617).* In their view the State is grounded not on contract but on nature and the Author of nature, because the State is a necessity of nature, *i.e.* it is necessary for human welfare and development. But granted that the State is a necessity

* Bellarmine's defence of this theory is to be found in "De Laicis," bk. III. ch. VI. ; that of Suarez in "Defensio Fidei Catholicae," bk. III. ch. II. sec. 5, and "De Legibus," lib. 3.

of nature and grounded on nature the question arises, how does the State come into existence as a concrete reality under a definite form of government, and how does political authority come to be placed in a single person or group of persons within the community? We shall give the explanation offered by Suarez. We must, he tells us, first consider human society or the State *as such*, abstracting from any particular form of government and taking account of the "corpus communitatis" only. Since society is by an ordinance of, and in the requirements of nature, a State, political authority from the beginning, by natural law, vests in society, *i.e.* in the whole community.* It is a natural property of the community, and, therefore, comes into being as soon as the community becomes a social body and before any individual or group is set to rule over such community. But though nature confers political authority on the community it does not prescribe that the community as a whole should retain this authority or exercise it immediately; on the contrary, the community has the right to place this authority in the hands of a determinate person or body of persons to be exercised by them; and when, by means of a compact or agreement on the part of the people, that is done, the community then becomes subject to such person or persons and becomes itself dispossessed of the authority given it by nature. But in every case political authority vests in the first instance in the community or the people as such, and by them it is conferred on such individuals or groups of individuals as they may appoint to occupy the position of sovereign ruler.

This is the well-known social-contract theory of Suarez and Card. Bellarmine. It is a social-contract theory only in a very modified sense of that term. It differs in many essential points from the social-contract theory of Hobbes and Rousseau. For instance, Suarez and Bellarmine lend no countenance to the doctrine that before the State arose mankind was without a moral system or laws of any kind; that morals and, in particular, justice, are wholly dependent on State authority. Also the authority of the State is not

* It is the Author of nature that confers this power on men—'hominibus in civitatem seu perfectam communitatem politicam congregatis, non quidem ex peculiari et quasi positiva institutione vel donatione omnino distincta a productione talis naturae, sed per naturalem consecutionem ex vi primae creationis ejus; ideoque ex vi talis donationis non est haec potestas in una persona neque in peculiari congregatione multarum, sed in toto perfecto populo seu corpore communitatis.'

regarded by Suarez as resting on social-contract only, but on nature, and the Author of nature, since authority is a natural attribute of the State. In one point only is this doctrine of Suarez found to fall within the category of the social-contract theories, viz. in the contention that the people are the ultimate human repository of political power, and that political authority could come to be vested in kings and princes and other rulers in one way only, viz. as a result of free compact on the part of the people.

Criticism.

Our criticism of this theory can only be of the briefest kind.

(*a*) In the first place: the theory of Suarez rests on a purely groundless supposition. Political authority, he tells us, is a natural attribute of society, *i.e.* of society taken as a whole, of the *corpus communitatis*, and, therefore, it must belong in the first instance to the people as a whole. Now in one sense only is it right to say that political authority is an attribute of society taken as a whole, viz. that political authority lies somewhere in society, just as domestic authority lies somewhere in the family. But domestic authority though present in the family, is a natural attribute, not of the family as such, but of the parents' position in the family, and, so, domestic authority vests in the parent alone. So also political authority is properly an attribute, not of society as such, but of the position of ruler within the social body, and, therefore, political authority vests in the ruler only. Whatever person or body occupies this position of ruler, in that person or body is vested, and exclusively vested, the fullness of political authority. Should the people be governed by themselves directly, as in the case of a direct democracy, political authority vests in the people *as ruler*; should they be governed by king or council, in such king or council is centred the fullness of political power. But in whatever hands this power is placed it rests there by right of nature and on the authority of the Author of nature, because it is a natural attribute of the position of ruler.

The question is sometimes asked: in whose hands did political authority rest before it was conferred on prince or council? What is conferred upon another must, it is asserted, exist before it is conferred, and, it is added, if political authority existed before it was conferred upon the earliest governments there was no other body in which it could reside except the people. The people were, therefore, the

first repository of political power and by them it was conferred upon the earliest rulers.

Our criticism of this argument is that it is based on a wholly mistaken view of the nature of political authority. Political authority is not of the nature of money or furniture or food that must first exist before it is received by its owner. Political authority, as we said, is of the nature of an *attribute* attaching to the position of the ruler, and, therefore, it is not necessary to suppose that the occupant of that position receives his authority from some other person; it springs naturally from that position just as the attributes of a body spring from the inner nature of the body and are not conferred on it by anything external to itself. And, in this, political authority follows the same law and principle as the authority of a father over his child or of a master over his servant. The authority of a father over his child is not conferred upon him by some other person. Neither did it exist in another before he received it in the first instance. A father's authority can only exist in himself, and it springs, not from some external source, but from his position as father, of which it is a natural and inseparable attribute. So also the authority of governments is not to be regarded as, in the first instance, resting in somebody, and then as conferred by them upon the government. It is an attribute of the position of ruler and springs naturally from that position. In one sense only should we speak of the authority of the ruler as residing necessarily in some other person before the ruler receives it. Being a natural attribute of the position of ruler all political authority must be regarded as residing ultimately in the Author of nature and as conferred by Him in every case upon all those who have a legitimate right to its possession and exercise.

(*b*) The people in a particular case, as we have seen, might act as their own immediate rulers, in which case the State is spoken of as a direct democracy. And being once possessed of the fullness of political authority, the people could, by means of a compact with one another, abdicate this authority and agree to be ruled by some determinate person or body who would henceforth be sovereign over all. Thus it is plain that the social-compact is one method by which political authority comes to vest in particular persons and bodies; but even when governments are set up in this fashion their authority is still derived from the *position* of ruler, a position in which they have been set by the whole body politic, and to which (position) the ruling authority essentially and inseparably belongs.

But there are other ways in which a ruler may legitimately come to occupy the position of sovereign. other *titles* of political authority, besides agreement on the part of, and appointment by, the people. Popular appointment or election is not the only title of authority. What these various titles are, and what the principle by which these titles are determined and enumerated will be considered in a later chapter.* But we may be allowed to refer again to one title which has already been discussed, and the further consideration of which will show how much at variance with historical fact is the theory of the social-compact developed by Suarez. We saw that the State in its earliest beginnings was a development out of the family, that the first kings were patriarchs or fathers of tribal families, the first councils the elders of the tribes. The family village-community, as we saw, glided imperceptibly into the position of a State ; the head of the village-community became imperceptibly, as the community expanded and took on wider and wider functions, the head of the State. Henceforth his authority was more than domestic ; it became political as well. And in this way and not through compact, political authority came first to be vested in the supreme ruler in the case of most States.

Such is the testimony of history and of all recent sociological enquiry into the origin of political rule amongst primitive peoples. Here is no trace of anything in the nature of social-compact. The first political rulers derived their authority at a time when such a compact would have been almost unthinkable, a period when any attempt to superimpose upon the family or tribal organisation based upon the tie of blood another organisation based upon a wholly different principle, viz. popular election to power, would have been exceedingly difficult, if not wholly impossible. And yet in those days the rulers of States wielded the sceptre on titles as legitimate and with an authority quite as effective and convincing as any ruler of the present day. It is clear then that political authority may arise according to other methods than that of social compact, and that direct appointment by the *corpus communitatis* is neither the oldest nor the only title of political rule.

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*p. 519.

CHAPTER XVI

THE STATE—ITS PARTS

Of natural organisms we distinguish four elements—two extrinsic, two intrinsic. The extrinsic elements are the efficient cause and the end of the organism. The intrinsic elements, also spoken of as "parts," are its matter and form. In the State it is convenient to distinguish the same four elements. Two of these we have already examined, its cause or source, and its end. We must now treat of the two remaining elements, its intrinsic elements or its parts, viz. its matter and its form—*i.e.* the material elements that compose it, and the formal principle by which these material elements are made to constitute, not any kind of society, but the particular society which we speak of as the State.

The material elements are two-fold—*first*, the people, organised into families and communities larger than families; and, *secondly*, the territory which they occupy. The form, or formal principle by which the people are welded into a State, is manifestly the ruler or governing authority, for it is by being subordinated to one supreme governing authority that the people come to constitute one political society or a State. We shall in the present chapter consider these three constitutive elements in their relation to the State, viz. the people, the land, the ruler or governing authority.

The People

The immediate component parts of any natural living organism are not the ultimate atoms of which it is composed but the cells consisting of many atoms. The

reason is because the cells are themselves small natural organisms with activities, laws, and properties all their own. Atoms are formed by nature into cells, cells into the larger organisms. So, also, the State is composed immediately not of individuals but of families; for the family is itself a natural unit intermediate between the individual and the State, and provided with laws and functions of its own. It is even more distinctive and independent than the cell within the body; for, unlike the cell, the family both preceded the whole of which it is a part and could still survive, and in some measure attain its end, even if the State should cease to exist. Individual men and women, therefore, are the immediate elements composing the natural unit of the family; families are the immediate component elements of the State.

But, just as the human body, though composed of cells, is yet specifically a different organism from that of the cell, so also the State is not to be regarded as a colossal family, but as a distinct organism in every way. It is important that the former view of the relation of the State to the family, a view which was advocated by Socrates in the early, and by Sir Robert Filmer * in the modern period, should be dispelled. If the State is only a colossal family, if it is not distinct in quality from the family, then only one form of State is possible, viz. the patriarchal State; and the limitations which such a form of State must necessarily impose upon the community, and the hindrances it would oppose to development, suffice of themselves to disprove any theory identifying the two institutions. Though the State is composed of families, though it is a development out of the family, it is, nevertheless, distinct from the family in all those elements through which distinctions in natural institutions arise. They differ in ground, in end, in form, and in the links which bind the members together. The family is *grounded* on necessities con-

* Patriarcha.

nected with the rearing of the child, and its *end* is to provide for the daily wants of parents and children. The State is *grounded* on the necessity of the State for social progress and the common welfare; and its *end* is to provide for the race the things that are necessary for the more developed life in so far as they cannot be provided by the family. The *form* of the family is essentially monarchical; in no case could the children dictate to their parents, or take the place of their parents; the State, on the other hand, may take any form, and in a democratic State the same citizen is both ruler and subject, makes laws through his representatives or, in a direct democracy, by his own vote, and is at the same time bound by and subject to these laws. The members composing the family are *bound together* primarily by love and reverence through identity of blood; the members composing the State are bound primarily rather by laws of justice, and, though originally a development out of the family, it can originate in other ways also, so that identity of blood, as a binding link between the members even in a remote degree, is not a necessity of its existence. The State, therefore, is a distinct natural organism from the family.

The juridical relations between the two we have already determined when treating of the end of the State. The family is a part of the State, and as the part is subject to the whole so the family is subject to the State and should have a care for its welfare and the welfare of the whole community. For two reasons, however, the family is not to be regarded as completely subordinate. *First*, not only families but individuals also, though political or social by nature, are not "wholly political," to use Aristotle's expression, for having faculties which extend beyond the State, the end of the individual man lies outside the State. He is not, therefore, to be regarded as a *mere* means to the good of the whole and is consequently not in everything subordinate.

The State, *e.g.* could not put an innocent man out of life simply because by living he might endanger the health of the community. *Secondly*, the family is a natural unit just like the State, it preceded the State, and could survive apart from the State. It has its own natural end and functions distinct from those of the State. In the attainment of its end, therefore, which principally lies in the rearing of the children, the family is independent of the State; only in the rarest circumstances, such as utter failure on the part of parents to provide for their children, would it be in the competence of the State either to take the rearing of the child into its own hands, or even to interfere with the parents' rights. The State must only help the parents, it cannot supersede them.

OF OTHER NATURAL COMMUNITIES WITHIN THE STATE, OR OF NATIONALITIES

The State did not develop immediately out of the family. It proceeded from the family through the village-community. As the family grew, it developed into something more than a mere family—into a community. That community consisted of persons of different generations related to each other by blood. For healthful continuance, however, intermarriage was necessary with members of other groups, and these members would naturally leave their own groups to live with that to which they had become allied.* The whole group would be characterised by community of blood, and as a rule by a common name. As growth continued, however, and particularly as intermarriage increased, or perhaps as fusion occurred with other groups, blood-relationships would gradually become so distant as to be almost negligible, so that that which in the beginning constituted the vital bond of connection would at length

* See p. 451. In some cases the woman passed to the community to which her husband belonged. In other cases it was the husband who left his community.

be superseded in importance by other characteristics of the expanding community. Intermarriage would solidify the different tribal units into a single homogeneous group ; certain marked physiological and psychological characteristics would appear ; identity of speech, of religion, of economic needs, would tend to produce a common life and spirit with identity of hopes, of interests, of professions, of antipathies ; their common history would beget a common tradition, and also common sympathies arising out of the same triumphs and sufferings in the past. These distinguishing characteristics would vary in relation to one another in different cases. In some, one characteristic would be more prominent ; in others, another. Also the degree of their effectiveness would vary. In some cases the effect would be to set up merely a " sense of association," with, however, no tendency to complete self-dependence. Such a community we speak of as a *people*. But where the community is of such dimensions, and the degree of cohesiveness so great as to create a *permanent tendency* to complete self-dependence (a tendency usually symbolised in some way, *e.g.* by a flag) from all other communities, the community is then spoken of as a *nationality*. A nationality *in its fullest sense* may therefore be defined as any large community descended from a common stock and possessing such a large number of common characteristics and interests as makes it racially one and distinct and sets up in it, or at least in such portions of it as occupy a distinct territory, a permanent tendency to political unification under a distinct ruler. A nationality may exist as one amongst many within the State : but it is characteristic of it that, if for any reason the State were to be disintegrated, the nationality would tend automatically to hold together, to develop as a distinct political unit, and finally to emerge as a complete State. This is the full conception of nationality. *In a less complete sense* of the word, a nationality may consist of individuals not descended from a common

stock. But in this case there must be other causes producing the same effects that we have described above. For instance there must be fusion and intermarriage over a long period producing certain distinct physiological characteristics and a distinct mentality, identity of environment, a common history and perhaps a common language and religion giving rise to identity of interest and feeling with the permanent tendency already indicated towards a distinct political life. But in the political understanding of peoples generally the most potent element going to constitute a nationality is accepted to be identity of blood and the recognition of a common descent.

Relation of nationality to State, and the rights of the former.

The State and the family differ in their end. The end of the family is to rear children and provide for their daily wants—the end of the State is to provide for the higher or more developed requirements of the whole community. Under no conditions can these two natural institutions be superseded either by different institutions or by each other. They are both absolute necessities of the human race. But the village-community into which the family develops, and the nationality, which normally is a later resultant of a particular grouping of such communities, are nothing more than halting-places on the way to the State, a mid-point in the expansion of the family, providing partially the things which it is the function of the State to supply fully when it appears. The end of the nationality, therefore, is not different from the end of the State, and its main function ceases when the State comes into being. Nationalities are not permanently necessary in the economy of nature as the family and the State are.

Two consequences follow. First, even though the nationality stands mid-way between the family and the

State, the State is immediately composed not of nationalities but of families—the family being a permanent and necessary natural unit, the other being transient. Secondly, unlike the family, nationalities are *in everything* subordinate to the State. If they become a menace to the State, the State is fully justified in attempting to suppress all manifestation of their national life and even of using violence against them.

But short of this a nationality has natural rights which the State must not ignore, and the question how far these rights extend is of great importance under modern political conditions. They have natural rights because they are a natural community. It is true that their natural function ceases when the State appears. But even though their function ceases they do not themselves cease to exist, and they can never be dissociated from their connection with the past and particularly their connection with the natural family. They continue always, therefore, to hold a natural place in the community, and that place gives rise to certain natural claims or rights which the State should not leave wholly unacknowledged.

What now are those rights which the State is, in justice, bound to accord to nationalities? (*a*) First, there is the right to the expression of their national life, a right to the retention of their language, rites, customs, dress, and everything in which the inner life of a people is wont to express itself. (*b*) Secondly, since, as we have seen, it is the distinctive characteristic of a nationality that it should tend to a distinct *political* as well as a distinct social life, *i.e.* that it should aim at autonomy or self-government, the State is bound to accord this right to nationalities unless there are special valid reasons for withholding autonomy. A few of these reasons for withholding autonomy may here be mentioned. Laws being territorial, it is impossible to grant autonomy where a nationality does not occupy a distinct territory. The Jews in England, for instance,

could lay no claim to autonomy on account of their nationality. Again, even where a nationality occupies a distinct territory, the State can withhold autonomy where the granting of it would result in a great multiplication of legal systems, and, instead of a single differentiated State, a fragmentary and multiple one. Autonomy, for instance, could not be granted to the innumerable nationalities of Hungary. Again, a particular nationality might be incapable of bearing the responsibility of self-government. A State, however, should be on its guard against its own innate prejudice in this respect. Most governments show a decided but most unreasoning inclination to suspect both the capacity and the intentions of a vigorous nationality. A general standard for deciding when a nationality is ripe for self-government it is not easy to find, but one most reliable test is given by Bluntschli,* viz. a great and long-continued struggle for liberty, and, we may add, a struggle conducted by purely constitutional means. It is impossible that such a struggle should not be proof of the possession of that degree of political life and enduring political cohesiveness which is required for autonomy. Lastly, a case may be made for withholding, if not autonomy, at least the fullness of autonomy where a people is so situated that the fullness of political autonomy would be certain to lead to complete secession.† These are all instances of where the granting of autonomy or complete autonomy is either impossible or at least gives rise to serious and perplexing questions. But, granted a likelihood of success, all political justice would seem to require that a desire long cherished and a claim persistently and passionately expressed for autonomous existence should not be enduringly denied. And not only political justice but political wisdom also recom-

* "Theory of the State."

† "If Australia or Canada," said Mr. Robertson, Under Secretary of Board ot Trade, February 2nd, 1912 at London, "chose to separate from the British Crown no British statesman would dream of seeking to retain those sections of the empire by force."

mends the concession. Nationalities cannot long continue to be over-ridden by force, and complete disregard of them is bound to react in time, even upon a powerful State, to its serious disadvantage. The State is in need of other bonds than those of law and force. If its cohesiveness is to be enduring, if it is to hold firm against the "shocks and jars" of war, and even the various crises that are possible in peace, it should rest upon something deeper than force and law or even than utility; it should rest upon the firm and immovable basis of popular contentment and good will. "No wise statesman," said Mr. Asquith, speaking in connection with the Welsh Church Bill on the elements that make up a nationality, "could ignore these things; they swelled together, they were the tributaries which came together and by their confluence formed that strange, mixed, and almost unanalysable product which was called national opinion and national sentiment."

(*c*) But the question arises, do the claims of nationality include also a right of complete secession from the State? Of course, any body of men have a right, *provided they are not too numerous*, to leave the State in which they have lived and seek a *habitat* elsewhere, and this right is in every case accorded by States. But secession in its technical sense means dissociation from the State whilst still occupying a portion of the territory of the State, and this right, we claim, mere nationality as such does not carry with it. For, first, the State, like the body, has a right to integrity, and loss of territory means loss of integrity in a very important relation. Secondly, a State undertakes certain economic and other engagements with foreign States on the basis of the existence of a certain population and certain resources and, therefore, she may lawfully resist any attempt at disintegration in these respects. Thirdly, the State which suffers dismemberment through secession is still responsible for the whole national debt, except such portion of it as is specially undertaken in reference to the seceding part.

For these reasons it is plain that a State is under no obligation to concede to nationalities a right of secession.*

The Territory of the State

Is territory an absolute essential for the State? The question is clearly answered by Aristotle in his Politics.† Examining the requirements of the perfect State, he enumerates, first, the things that are necessary for the being of the State, then, the things necessary for its perfection. For its being you require a population, territory, and *the like*.‡ For the more perfect being of the State a population of a certain size and a territory of particular dimensions and quality are required. All through his work Aristotle treats the territory as on a level of importance second only to, if not equal to, the population. And the reason is obvious. The definition of the State is found in its characteristic of self-sufficiency.

* From this it will be seen how false is that principle of which so much was heard in the nineteenth century in connection with certain great political movements occurring in that century, viz. the so-called "principle of nationality," or the principle of "one State, one nationality," the principle that States and nationalities should be coterminous. It might, of course, be a good thing if every State had that degree of cohesiveness which nationality always carries with it, a cohesiveness which is at its maximum when the State is composed of a single nationality; but there is no ground of reason by which it could be shown that nationalities and States ought to be coterminous. Where there is no common government any group of persons, even though belonging to different nationalities, have a right to choose a common ruler and organise themselves as a State. Besides, suppose that all the members of a particular nationality, say all the Celts of the world, were to come together and form themselves into a single State, surely it is impossible to think that no member of that community could ever again be free to leave that State and seek for citizenship elsewhere. Yet if only one person did so the principle of nationality would have been definitely and effectively broken through.

† VII. 4.

‡ Under this very general category are, no doubt, included the various things enumerated in VII. 8, 7, viz. food, the arts, revenue, arms, courts of justice, etc., all of which things Aristotle tells us are "things which every State may be said to need." For a State is not a mere aggregate of persons, but a union of them sufficing for the purposes of life, and if any of these things be wanting it is simply impossible that the community can be *self-sufficing*.

Now, without territory, a community cannot be self-sufficient. On the one hand it cannot be *economically* self-sufficient, for without territory the population cannot produce the necessaries of life nor the means of securing these necessaries from outside. A nomadic population has no permanent resources on which to rely except its ability to fight and plunder. On the other hand, it cannot be *juridically* self-sufficient, *i.e.* a nomadic community cannot enter into right juridical relations with other States; for, first, it is too indefinite (it is the territory of a State that chiefly defines and identifies it), and, secondly, the mere fact that it is nomadic makes it a permanent aggressor against all other and, in particular, all fixed communities. A nomadic tribe, therefore, cannot take its place in the comity of nations on a level with the rest. For these reasons a fixed territory is to be regarded as a prime necessity for self-sufficiency, and, therefore, an essential part of the State.

The State and its territory.

The control of the State over its territory is a control of jurisdiction only, not of ownership. Ownership is not necessary to the work of government, which is, to direct the community to the attainment of the common good. But on the other hand, without jurisdiction the work of the State could not be accomplished.

Before the end of the feudal period, the idea was prevalent that lordship brought with it a right of ownership over the land, and not a right of jurisdiction merely. "Kings," wrote Louis XIV,* "were born to possess all and to command all. Kings have unlimited power, and have the right of disposal over all goods, whether possessed by Church or laity, but for the good of the State. . . . Everything within the State of whatever kind belongs to us. . . . This is the first of all laws, but it is the least known outside the circle of supreme rulers." After the French Revolution the title "King of France" was disallowed and "King of the French" substituted in order to emphasise the fact that kingship brought with it, not proprietary rights but a right of juris-

* Testament to his son.

diction only. Louis XVIII and Charles X did, indeed, later adopt the older title once more, but at this later period there was no danger of its meaning being misunderstood.*

The Authority of the State

By the authority of the State is meant the right of the State, or of that person or body of persons who rule and represent the State, to take the means necessary for the attainment of its end. The authority of the State and of the ruler representing it is limited by its end. Things that are in no sense necessary for the common good the State has no right to impose as a duty on its subjects. But rights extend to all those things that are necessary for, or promote the public good in any way. Thus it has a right to make laws, to administer them, to punish those who violate them, to provide proper conditions, moral and physical, for human life and development, to impose taxes for its own support so that it may be in a position to undertake all necessary and useful work. Excluding the things that appertain to the individual interest alone, or that are specially entrusted by nature to the family, *i.e.* the rearing of children, the State has the right through its ruler to enter upon any course that is necessary for, or promotes the public good. The authority of the ruler extends to everything that is not bad or useless in respect of the end of the State.

The Grounds and Titles of Political Authority

We have to distinguish between the *grounds* of political authority and the *titles* of authority.† The grounds of authority are those things on which authority is based as a system or institution—the things to which one makes appeal in proof of the existence of political authority generally, *i.e.* to show that there is such a thing

* See Bluntschli, "Theory of the State," V.

† As was done in connection with private ownership, p. 115.

as political authority. The titles of political authority are those things on which authority is based in particular instances or to which one makes appeal in order to prove that political authority vests rightfully, in a particular case, in one person or body, rather than in another person or body.

Political authority is *grounded* immediately on nature, and remotely and ultimately on the Author of nature—the Supreme Being. It is grounded immediately on nature because it is a natural necessity. The State is grounded on nature, since it is naturally necessary for human welfare and development. But political authority is a natural requirement of the State. And, therefore, political authority is an absolute necessity of nature and is grounded on human nature. The first of these propositions, viz. that the State is a necessity of nature, we demonstrated in our discussion on the origin of the State. The second, that political authority is a natural requirement of the State, though obvious, may be established as follows: The State is a society, and every society requires to be directed to its end by means of some ruling authority. For there are many different means by which the end of any society may be attained, and a ruling authority is required to fix upon one definite set of means and to insist on these being followed. Without such authority the citizens who compose the State would be a rabble not a society. Without authority there could be no *conspiratio virium*, no common endeavour, no order, no progress. On the contrary, without authority the community would be constituted of opposing units, actuated by opposing forces, and the result would be the speedy disintegration of society. It is evident, therefore, that authority of some kind is necessary, first for the making of laws, and second for executing and enforcing the same; and it is necessary in a community composed of good men as well as in one consisting of good and evil. For even good men if they are to promote the end of the State require to have some definite means

determined for them, otherwise all would be acting differently and antagonistically, and peace and progress would be impossible.

Political authority is, therefore, naturally necessary for the State, and since the State is itself a necessity of nature, political authority is also a necessity of nature. But though grounded immediately upon nature, political authority is not grounded on nature alone. It is to be regarded as grounded ultimately upon the Author of Nature, upon God, the Supreme Ruler of the Universe.*

We must now treat of the *titles* of political authority. In writing on private ownership we showed that in order to establish ownership in any case it was not enough to show that private ownership exists as an institution, in other words it is not enough to appeal to the grounds of private ownership; a man should also be able to make good his own *title,* i.e. to show that

* The above reasoning must be very carefully distinguished from two theories to which it bears a certain resemblance, but from which it is in reality entirely different. The first is the theocratic theory that the State is founded *immediately* by God and governed by Him, either immediately or through His prophets or representatives. In our exposition the State is grounded immediately on nature, and political authority is represented as bearing the same relation to the Divine authority that paternal authority does—both derive ultimately from the Author of nature, but immediately they rest on requirements of nature itself.

The other theory from which our own has to be carefully distinguished is that of Suarez. Suarez, like ourselves, insists that political authority does not derive immediately from God (nullus principatus politicus est immediate a Deo), but the theory that underlies this contention is quite different from and opposed to ours. In Suarez's view political authority is not immediately derived from God, because it is immediately derived from the people. It is conferred in the first instance immediately upon the people, and by them it is vested in a certain ruler. We, on the other hand, defend no such theory. In some cases, as we shall presently see, when treating of the titles to political authority, the people do as a community proceed to appoint a ruler, and to set up a certain form of government. Even, however, in that case they do not necessarily confer an authority already possessed by themselves. But whether they do or not, it is certain that a State may come into existence without any such common act or arrangement on the part of the people, and, therefore, the theory that *all* political authority is conferred immediately by the people is opposed to the theory defended in our text.

he and not another person is rightful owner in the case. So, also, it is not enough to prove that political authority exists as an institution—a ruler should also be able to show that authority rests in him personally and not in another; he should be able to point to some act or condition of things which will be accepted by men as entitling him personally, as against all other claimants, to the position of ruler. What, now are these titles to political authority?

It is necessary here to distinguish between *natural* and *artificial* titles. In every fully developed State the constitution provides a definite method for securing the continuance of government, and the use of that method will be the title generally appealed to in establishing one's claim to govern, should that claim be at any time called in question. In England, for instance, descent is the title on which kingship depends, and election the title relied on by the members of the House of Commons. In America election by certain elected bodies bestows the title of presidentship. But these titles are purely artificial. They are, indeed, none the less effective for that. But still they are artificial. For they are all characterised by two things, first, they are titles selected or ratified by a State already in being, *i.e.* the State in being possesses a constitution and these are the titles laid down in the constitution; *secondly*, they are quite arbitrary. Any State might at any time alter the existing title and set up another in its place, there being no constitution that cannot be changed.

By *natural* titles we mean those titles by which States are set up *in the first instance*, by which a new State is organised, by which a ruling authority is for the first time placed over a people. Any claim that can be legitimately put forward in such a case will be natural in the sense that it does not depend on mere human convention like the titles set out in the various constitutions. It is with natural titles that we have to do in the present chapter.

Now, before we proceed to enumerate these natural titles, it is necessary to explain the *principle* by which natural titles are determined. It will be observed that though nature requires the existence of the State, and, therefore, of a ruling authority over the State, she does not herself determine the individual or body of individuals, in whom the necessary political authority is to reside. But she will be satisfied with any act or method, as title, which, while it offends against no existing right, and is in harmony with the essential idea and attributes of the State, *effectively sets a ruler over the people*, and so makes possible the beginnings of State organisation. This is the principle by which the original titles of authority are determined, those titles, namely, which bring the State into being under a definite political authority in the first instance. Once, however, the State is constituted in being, it can then proceed to fix upon some settled title of succession specially befitting its own particular requirements.

At once certain acts and incidents suggest themselves as specially fitted to be regarded as natural titles of authority. These titles we shall now briefly attempt to enumerate.

POPULAR ELECTION

The most obvious, though probably not the oldest title, in point of time, is that of *popular election* or choice. As we said, nature requires that there should be a ruler; and if the people are sufficiently united and organised, even before the State is actually brought into being, to fix, by an act of choice, on some individual or body of individuals to rule over them, there could be no clearer way of fulfilling nature's requirements than this, and certainly no more effective way.

THE FACT OF POSSESSION

But this is not the only title to authority. As we said, nature requires that there should be a ruler; but

she is satisfied with any method that effectively furnishes one, provided it does not violate an existing natural right or contravene the essential requirements of authority. She will not be satisfied, for instance, with foisting somebody, as ruler, on a community already provided with a governing authority, for the nature of the State does not admit of many rival supreme authorities—the supreme authority, as we shall see presently, is necessarily one. But from this we are led to a second genuine title of political authority, and one which is perhaps the oldest in point of history, viz. *the fact of possession*,* the fact that some one is actually exercising control of the community in some capacity other than that of political rulership when the State first comes into being. As we saw when treating of the origin of the State, even before the self-sufficing State appeared, society was already to some extent organised and presided over by the head of the tribe, or a group consisting of the various heads of different tribes. Gradually and imperceptibly this patriarchal † society, if we may so describe it, developed into or became the State, so that when eventually the condition of self-sufficiency was reached, and the State as a result came into being, it was already provided with a ruling head exercising over the community the fullness of authority in regard, not only to its domestic needs, but to all its needs. The position of patriarch would not *of itself* confer political authority on this head, for the patriarch as such is head of the family only, and the State though a development from it is essentially a different society from that of the family; but the fact that the family head was in actual possession, governing the community in all its relations when first the degree of organisation required

* *De facto* government is accorded recognition in various degrees in different countries. See Dicey, "Law of the Constitution," p. 355, for an interesting comparison of England and France.

† We use the word in a wide sense—meaning the ruler or rulers in the family community, including even matriarchal communities See note p. 466.

for a State was reached, was itself a sufficient title of authority. It was, in fact, probably the only title that could confer cohesiveness and enduring strength upon society in the earliest periods of human history.

CONQUEST

Conquest is another natural title of political authority. Conquest puts the victorious government in a condition of superiority over that which has suffered defeat, and *under certain circumstances* this condition brings with it a number of rights, including even the right to bring the defeated nation under complete subjection, *i.e.* to annex it and assume complete sovereign authority over it. This may occur not only in the case of a just but also of an unjust war, but the reasons are very different in the two cases. In the following pages we shall discuss the question how and in what circumstances conquest confers this right on the victor, first, in the case of a just : secondly, of an unjust war.

In a *just* war the victor has no right merely because of his victory to bring his enemy into permanent subjection, any more than a private individual has the right to assume ownership over another simply because he has defeated him in just combat. But just conquest confers this right of annexation and government on the victor in certain well-defined cases, of which the following are the chief examples. A victor may bring his enemy into permanent subjection as a method for securing compensation, where no other kind of satisfaction or redress is possible. A just war always presupposes injury, and, therefore, the victor has always a right to compensation of some kind. Again, annexation may be necessary in self-defence, since a beaten but still independent enemy may often harbour designs of revenge against the victor, and a victorious ruler has every right to take corresponding precautions for the future safety of his subjects. It is, however, a very

grave thing to deprive even a beaten enemy of independence, and, therefore, a victor should not use this right unless the enemy has manifested his dangerous intentions in some not uncertain way. Finally, annexation of at least a portion of the enemy's territory may be necessary for military reasons—for instance, on occasion of the rectification of frontiers, a right which is often exercised in war in order to strengthen the victorious party against future aggression on the part of the defeated enemy.

Next, victory under certain conditions may confer on the victor a right of legitimate rule even in the case of an *unjust* war. That unjust victory does not of itself, and always, confer rights upon the victor is an obvious truth which it will not be necessary to prove to the reader. An unlawful act cannot of itself give rise to lawful right. But an unlawful act may sometimes give rise to certain facts and conditions which are not themselves unlawful, and out of these facts and conditions it is possible that rights may arise. Thus, to take a case outside of our present discussion—to oppose a law is obviously unlawful and a sin. But widespread violation of a law may often result in setting up a custom opposed to the law, and such custom may then give rise to a new law opposed to the old.

What we purpose to show in the course of the following pages is that, after an unjust war, such a set of conditions may sometimes intervene as suffices to legitimise a rule begun in violence and injustice—in other words that a *de facto* but illegitimate government may in course of time become legitimate, and, even tends naturally to become legitimate. The legitimation of a *de facto* government will be found to rest on two recognised natural titles of political authority, viz. (*a*) prescription and (*b*) the consent of the people; and in both connections it will be shown to be a strict requirement of natural law.

We shall treat of legitimation in connection with

each of these titles separately. And first of prescription.

(*a*) The importance of prescription * as a source of rights has already been considered in connection with ownership or property. But if prescription may operate as a title of ownership in the domain of property, it is even more potent and effective in the domain of politics as a title of civil authority. Prescription, as we saw, is not a natural title † in regard to ownership or property, *i.e.* the natural law does not of itself confer ownership upon every person who has been in possession of an object for a certain time. The reason is that the conferring of ownership in this case is not necessary for human welfare. There is no natural law or need requiring that every object in the world should be owned by some one, and, as a matter of fact, innumerable things of value are not the property of any one. However, though natural law does not itself enforce prescription in regard to property, it does, in the interest of the community, urge upon the civil authorities the necessity of instituting some such law, since, otherwise, there would be much confusion and doubt in regard to property, no man being certain whether his own rights and those of others might not be violated through some defect of title in the past.

But prescription, though not in strictness a natural title in the case of property, is natural as a title of political authority, and, *granted the necessary conditions*, confers upon the *de facto* government the right of legitimate rule. And the reason for this difference is obvious. As we said, it is not absolutely necessary that every object of value in the world should have an owner, but it is necessary that every society should have a ruler (*a legitimate ruler, whom the people are bound*

* The reader may not like the use of the word "prescription" here. We use it, however, in a broad sense as equivalent to the effect of lapse of time in conferring rights.

† Except perhaps in the case of "immemorial" prescription.

to obey), otherwise there can be neither security, nor happiness, nor tranquillity in the realm.

Most unhappy is the condition of any people who, during a long period, are made subject to the rule of two governments, one, the legitimate government which yet is unable to perform any act of government, another the *de facto* government which is physically capable of governing the people, but yet is without the necessary authority to do so. Such a people are without a ruler in any real sense, *i.e.* a person or body who possesses the right to rule, and is in a position to put this right into operation. Their condition is in a sense even more unfortunate than that of a people who have no government of any kind. Like the latter they have no binding laws to guide them, *i.e.* no laws which the legitimate government is in a position to execute. But in addition they are made to suffer innumerable positive evils springing out of the hostility of the two claimants. For instance, by lending support to the *de facto* government the people offend against their consciences; by adhering to the legitimate government they incur the anger of the usurper, and are penalised in innumerable ways. Again, the people are torn by internal dissensions, some fired by enthusiasm for the legitimate sovereign, some urging adherence to the *de facto* ruler. And out of these dissensions will arise feuds, party quarrels, violence, bitterness, and disturbance of every kind. Again, the natural wealth of a country, which, without a ruler, might be saved for future use, and would in large measure be presently used for the good of the people, is wasted by the usurping government in protecting itself, in extending its influence, and consolidating its power.

This is the position in which a people finds itself after unjust conquest—a position fraught with evil for the whole community. What, therefore, is to be done in the circumstances? The people cannot continue to live in such a lamentable condition, an end must be

put to it some time, and an end can only be put to it by ending the conflict between the two governments. Now, what it is essential to remember in this connection is that, in comparison with the needs of the people, the claims of the competing governments are of secondary importance only. The essential end of government is the welfare of the people, and government is only a means for attaining this end. There is no claim of government that cannot be defeated by natural law once it is found to oppose the public welfare. When, therefore, sufficient time and opportunity have been given to the dispossessed government to retrieve its position, when after a long period it has shown itself utterly unable to do so, when, in the judgment of competent men, it has been completely subdued so that it can no longer be regarded as a serious competitor with the usurping government for the office of ruler, it becomes the clear duty of the pretender to renounce his claims, and if he should still continue to urge his claims, he acts the part, not of a government seeking the good of the people, but of a tyrant seeking his own good at the expense of the people. Being, therefore, under an obligation to cease from pressing its claims upon the people, the old or superseded government must be regarded as gradually losing its right of legitimate rule, and, therefore, this right tends naturally to vest finally in the hands of the acting or *de facto* government.* It may be objected that in this conflict of claims the usurper was also under an obligation to desist from occupation and to give place to the legitimate ruler, and that, therefore, the claim of the usurper is not superior to that of the older government. And this is true up to a certain period. But in the long run it

* See Taparelli, "Saggio Teoretico di Dritto Naturale," diss. 3, cap. 5, art. 2: A. Castelein S.J., "Droit Naturel," p. 792: V. Cathrein S.J., "Moralphilosophie," II. 665: P. Schiffini S.J., "Disputationes Philosophiae Moralis," II., 448: T. Meyer S.J., "Die Grundsätze der Sittlichkeit und des Rechts," 232; and, by the same author, 'Inst. Jur. Nat.," II., 501.

is the welfare of the people that must be allowed to determine all such issues and must decide all questions of right between the opposing governments. And, in this case, the right to rule, as determined by the welfare of the people, rests clearly with the *de facto* government. Better in the interest of the people a government which, we suppose, is not oppressive, and which is in a position to execute all the offices of government, than one, however old-established and however good its title, which is not in a position to perform any of the offices of government. The latter is not a government in any true sense.

This is what is meant when we say that with lapse of time nature tends to legitimise the *de facto* government, provided it is prepared to act as a government should, *i.e.* to seek the welfare of the community. It means that the supreme natural end of all government is the welfare of the people, and, therefore, the right of sovereign rule tends by natural law to forsake that body which is wholly debarred from attaining this end, and to vest in that body which can attain this end and is actually fulfilling the offices of government.

It is important also to point out that the *de facto* government may become legitimised, even though it does not find favour with the people, and even in spite of their opposition. For the needs of the people override every other consideration in relation to government, even the passions and predilections of the people themselves. The people, just like the ruler, are bound to do nothing which is opposed to the public welfare, and, therefore, since, in the case we have made, legitimation is required for the public welfare, prescription not only removes the right of the older government, but also nullifies every claim on the part of the people in favour of that person or body which is incapacitated from providing for the public good. And this doctrine holds good whatever the form of government which has been dispossessed—whether it is that of a monarchy,

an aristocracy, or a republic. In all it is the duty of the ruler to aim at promoting that which is the essential end of all government—the welfare of the people, and, therefore, no claim or right of the ruler can be allowed to stand if it definitely opposes that end.

But this transference of authority from the old government to the new on the ground of prescription, is necessitated by other reasons also beside this fundamental need of which we have spoken, that, viz. of an actual and effective government for the people's welfare. When a usurper has been fulfilling the office of ruler for a considerable period, innumerable prescriptive rights will of necessity have been formed, based upon acts of the *de facto* government, and these rights will act, concurrently with the general need of government just described, in conferring upon the *de facto* sovereign the right of legitimate rule. In the domain of property the effects of prescription are described in a very vivid manner by J. S. Mill, and his description will help us to form some idea of how prescriptive rights may arise in the sphere not of property only but also of government. "It may seem hard," he writes,* "that a claim originally just should be defeated by mere lapse of time; but there is a time after which . . . the balance of hardship turns the other way. With the injustices of men as with the convulsions and disasters of nature, the longer they remain unrepaired the greater become the obstacles to repairing them arising from the aftergrowths which would have to be torn up or broken through." Now, these aftergrowths, deeper and more extended in the case of government than in that of property, must, it will easily be seen, present a very grave obstacle to the return of the pretender to power after his rule has been superseded for a very long period, and they will facilitate in a corresponding manner the legitimation of the *de facto* ruler.

* "Principles of Political Economy," Bk. II. ch. II. par. 2.

Let us examine some of those aftergrowths placing obstacles to a return of the old *régime* after a continued period of usurpation. In course of time a *de facto* government will (*a*) first of all, create in the country a large and increasing *party* or *following*, whose interests will centre in the continuance of the new government. This following may be smaller than the opposed legitimist party, but it will have its own value in that accumulation of facts and events which between them make up the title of prescription; (*b*) government will set up certain *vested interests*, as by appointment to governmental offices, the founding of state-aided schools, universities, hospitals, etc., all dependent on the government's continued existence; (*c*) it will make *settlements of property*; (*d*) enter into mercantile transactions of various kinds on the *credit of the government*, e.g. by borrowing money (since every country accumulates a national debt), by lending money (as when the British government lent money to the Irish farmers), by giving out contracts to private firms for the erection of buildings, the construction of battleships, etc. The work of government is obviously the most important political function in any country. What we often fail to remember is that it is also the biggest business in the whole mercantile world; (*e*) finally, a *de facto* government will effect alliances with foreign States often involving large financial obligations. These alliances, too, are effected not in the interest of the government alone, but primarily in the interest of and on behalf of the people.

These are only a few instances of the many prescriptive rights that arise in connection with government, but they will suffice to afford us some idea of the range and importance of these rights. We have said nothing of the innumerable private contracts which the people make on the faith of the existing government, in the sense that they are made in consideration of the power of the government to enforce their observance. These

also, although only indirectly, set up a claim on behalf of the existing government. But the other instances we have given are all instances of rights that are directly due to the action of the government itself, and, therefore, they set up a direct claim to permanency on its behalf. From the first hour that a ruler begins to govern, his duties bring him into relation with every person in the community. As a result, a system of rights and claims begins at once to form, extending and ramifying in every direction, any disturbance of which would bring confusion and inevitable loss to the community. And since these rights bind in natural law, and since their fulfilment supposes the permanence of the government that is responsible for creating them, the natural law must tend, where the circumstances allow, to give that government permanence, in other words, to endow it with full political jurisdiction. As long as the old government exists, the natural law is obviously debarred from doing this, since there cannot at one and the same time be two legitimate sovereignties in the land. But as soon as the old government has disappeared or is completely subdued, the natural law must be regarded as proceeding forthwith to legitimise the new government, and to regularise its position in relation to the community.*

* The pretender may object as follows: I am willing to respect all those rights which have been mentioned if I am returned to power. How, therefore, can they be regarded as favouring the rule of the usurper any more than they favour my rule? But the question which we have here to consider is not what the pretender is willing to do, but *what is the disposition of the natural law* in regard to the rights of the community? Now, the natural law knows nothing about the pretender's willingness to acknowledge these rights created by the usurper, his willingness being quite accidental. The natural law puts the responsibility for defending this body of rights on the government that created them and on it alone; and, therefore, it is only of that government that it will take account in providing for their fulfilment. It is to the rule of the usurper, therefore, that it will give its support, not to that of the pretender.

Again, it may be objected that, just as the usurper creates rights that he himself is supposed to fulfil, thus establishing a claim to legitimation, so also the pretender must be supposed to have created rights and claims in the course of his *régime*, and, therefore, the problem

The important question now arises—after what period does the right of lawful rule pass out of the hands of the pretender and into those of the *de facto* ruler? This is an exceedingly difficult question to answer in any kind of precise manner, since the necessities of the common good are often very ill-defined, and every scheme for attaining it is marred by some defects. But a few general propositions may be laid down which will help us to come to a right conclusion in a great variety of cases. In the first place, much depends on whether the pretender has lost only a part of his dominions or the whole of them, and, therefore, whether he still exists as a sovereign ruler of some State, or has ceased altogether to exist. A *de facto* government prescribes much more quickly where the ruler is completely deposed, as in the defeat of the Neapolitan dictator in 1860, and the annexation of Hanover by Prussia in 1866, than is possible against continuing rulers, part only of whose dominions are invaded and annexed, as in the German annexation of Alsace and Lorraine. The reason is that where the sceptre has fallen completely from the hands of a ruler, his restoration is always a much more difficult experiment than when restoration consists simply in the extension of an already existent dominion. Again, *generally speaking*, legitimation is not effected during the reign of the original usurper. His reign begins by an injustice, and it is not for the general good that a wrong-doer should become ruler through mere lapse of time. This holds true also in the case of property. The thief does not become owner through lapse of time, though his successors may. We say

of how the existent rights are to be fulfilled cannot be said to favour one government more than the other. But the difference is that, in the circumstances, the pretender is not able to give effect to any responsibilities which he has incurred, whereas the usurper *is* able; and therefore the natural law, *which considers primarily the requirements of the community and not the claims of the respective governments*, must be regarded as at once legitimising the *de facto* government and placing on it full responsibility for the fulfilment of every right created by government, even by the government of the pretender.

"generally speaking," for legitimation during the life of an unjust invader is not to be regarded as wholly impossible. It is possible in very extreme cases where the good of the nation overwhelmingly requires such legitimation. The rule of law that *mala fides* excludes the possibility of prescription, though holding true of government as well as of property, does not hold with the same degree of urgency in both cases. As between two claimants to property, the only issue involved is that of the claimants' own rights. But when governments are in conflict about the sovereign power, the chief interest involved is that of a third party—the people, and when their needs overwhelmingly require that the issue should be resolved one way or another, even the *mala fides* of one of the parties should not be allowed to stand in the way of any solution that meets the necessities of the case. Normally speaking, however, as we said, prescription cannot become effective in the first generation, nor indeed in the second, since, normally speaking, the new government has not in that period become necessary to the State. But the rights of the pretender cannot go on for ever. The people cannot live in doubt and confusion for ever. Their welfare requires that if the pretender cannot retrieve his position, the rule of the *de facto* government should be legitimised at some time, so that the country may begin once more to develop along normal lines. What is that time? If the position of the pretending government is hopeless * or if the pretending government has completely disappeared and all the old machinery of government has definitely passed away, the rule of the usurper may normally be regarded as legitimised after a couple of generations. Where, however, the original ruler or his successors are still pressing their claims, but there is no hope of success for them, *i.e.*

* "When," says Cathrein (*op. cit.* p. 668), "the return of the pretender may be looked on as morally impossible, then the *de facto* government is legitimised."

of immediate success or success within a reasonable period, the conclusion to which our principle (the principle, viz. that the welfare of the people is primary) clearly leads is as follows: the rule of the usurper is to be regarded as fully legitimised whenever the new government has so become part of the life of the nation, and created such a following, and set up such a body of rights there that to overthrow it would have all the disturbing effects of a second revolution.* If ever stable government is to be attained, legitimation should be acknowledged under such conditions. When that condition of things is likely to be realised it is not easy to say. But considering the rapidity with which government ordinarily makes its influence felt in the community, it is hardly to be supposed that the claims of the pretender can lawfully be urged after four or five generations of opposing rule.

(*b*) The *consent* of the people, as we have already seen, is to be counted among the original natural titles of political authority, *i.e.* it is a valid title when a community is forming for the first time into one political body, and a new State is brought into being. We have now to show that the consent of the people may also operate as a valid title of political jurisdiction in case of conflict between two opposing governments, one, the legitimate government defeated in an unjust war, the other, the *de facto* government but illegitimate.

There are writers who maintain that by means of popular consent the rule of the usurper can be legitimised any time after usurpation is effected, even though the original ruler is still carrying on an effective campaign against the usurper and has a chance of success. Now, this view is based entirely on the theory that there exists only one title of rightful government, viz. the consent of the people, and since that theory has already been rejected in these pages we must also reject the

* See Meyer, "Inst. Jur. Nat.," II. 501; Cathrein, *op. cit.* II. 667.

conclusion that has been built upon it. The consent of the people is only one out of many titles of authority, and it is excluded wherever, according to law, the government is constituted in some other way than that of popular election or consent.

The position of a usurper could at any time be legitimised by the consent of the legitimate but dispossessed ruler; and, therefore, if the people are themselves the legitimate sovereign, as in the case of a republic, they are the persons whose consent is required. But if the people are not the sovereign ruler, as in the case of a monarchy or an aristocracy, the people are not the authority from whom consent is to be sought; and as long as the monarch or ruling aristocracy is in existence, it is on their authority and by their consent only that legitimation can be effected. During that period, too, the people are bound to refrain from giving their consent to the new *régime* or doing anything that would *directly* help to consolidate the usurper's position; they should abstain from those acts that we shall describe later as indicating popular consent, since, by our hypothesis, all such acts are essentially acts of co-operation in wrong-doing.*

The process, however, by which one ruler replaces another in the case of conquest, is very gradual, and, therefore, a time must come in the history of a defeated monarchy or aristocracy when the community may be regarded as without a legitimate ruler in any real sense, the fallen monarch having failed utterly to retrieve or to improve his position, and being, therefore, utterly unable to govern, while the usurping government has not yet established its clear right to allegiance and full recognition by the people. When that period arrives we may regard the people, in default of anybody else, as a kind of residuary legatee of the dethroned monarch,

* The people, however, not only may, but ought to obey all such laws of the usurper as are not tyrannical or unjust, at least for the sake of public tranquillity.

with a right to choose the ruler. And should they in the exercise of this right give consent and acceptance to the usurper,* his rule is to be regarded as legitimated from that moment. If, however, their consent is given only gradually, different bodies of the people or their representatives giving their acceptance independently of one another and at different times, the rule of the usurper will only be gradually established, and legitimation will be completed only when the consent of the people is substantially complete. Of course, the usurper may previously have gone very far to establish his claim to legitimation on another ground altogether, independently of popular consent, viz. that of prescription. In that case the consent of the people will at least serve as an additional title to legitimation, and will also inevitably hasten its occurrence by shortening the maturing period of prescription itself, for, the consent of the people being once given to the usurper, the position of the dispossessed ruler is thereby considerably weakened and often rendered wholly impossible, with corresponding strengthening in the position of the usurper.†

A word will be necessary on the various ways in which the people may signify consent in favour of the usurping government. Consent may be given *formally* and directly or *implicitly* and indirectly.

Formal consent is given by a special act meant to

* We may remark also that should the people, while the old government is still in existence and has a chance of retrieving its position, *unlawfully* give their consent to the new monarch, then, though that consent is not sufficient to confer sovereign authority on the usurper (the people in that case not being the source from which consent should be sought), yet by signifying their acceptance of the usurper they indirectly hasten the period of legitimation for the two reasons given in the text, viz. their action weakens the position and the chances of the old government, and strengthens that of the usurper. After such consent, prescriptive rights are bound to form with great rapidity.

† Napoleon was crowned emperor by the Pope only five years after the suppression of the Directory and the establishment of the Consulate. But in the meantime he had obtained a plebiscite in his favour.

indicate consent, as by a plebiscite, an unlimited oath of fidelity, addresses of loyalty from the people. Formal consent may be given in a single act as in the case of plebiscite in which the whole people vote their consent at one time, or in a number of acts spread over a number of years, *e.g.* by addresses of loyalty on different occasions from various popular bodies. Opposed to formal consent is formal dissent which is sometimes conveyed by protests of disloyalty, and sometimes by rebellion.*

Implicit or indirect consent is conveyed in some act, the primary purpose of which is not to express consent, but which nevertheless implies acceptance of the new government. It is either *negative* or *positive.* Negative consent consists in not protesting when one ought to protest. Positive implied consent is given by any act that tends *directly* to consolidate and establish the usurping government, or that involves direct co-operation with it. The following are some examples of positive implied consent: the acceptance of certain government offices, *e.g.* any office in army or navy, or in the higher civil service, or the diplomatic service; any general recognition on the part of the people that such offices ought to be accepted; lending money † to government, as in the purchase of "Consols"; borrowing it; ‡ the use of the franchise or other political privileges conceded by the existing government; creating a national party in the new parliament. We may add also—acceptance of a system of local government under the supreme authority of the central executive. The people by taking part in this system

* Not all rebellion, however, is to be taken as evidence of opposition to the existence of the usurping government, but only a rebellion undertaken by the whole people, and undertaken precisely in order to overthrow the usurper. Rebellion which is undertaken in order to put an end to unjust or tyrannical laws could not be regarded as an act of dissent impeding the legitimation of the usurper. Such a rebellion is often started by persons who are quite satisfied with the existing constitution.

† To lend money to government is to aid it in the most direct manner.

‡ A borrower is always compromised.

participate in the most direct way in the rule of the central authority.

These are all acts that tend more or less directly to consolidate the position of the *de facto* government, and they are undoubted evidences of popular consent.

Any steady and long-continued manifestation of popular consent given in any of these ways, either by the people themselves, the leaders of the people, or the representative newspapers, is to be regarded as a natural title, making for the legitimation of the usurping government. Such consent would be most potent as a title of legitimation even in the early period of the usurper's career, but it is of decisive moment when given by the mass of the people after a long period of years. Consent given *then* is sure proof that the new government has grown into the substance of the nation, and that the usurper is now in peaceful possession. A section of the people may still be discontented, and may still hope at a future time and by some good turn of fortune to throw off the yoke imposed upon them; the people, even as a whole, may feel no enthusiasm for the new *régime*; yet, once the people have accepted the authority of the new government in any of the ways just indicated, the authority of the new ruling body may then be regarded as fully established and secured in natural law.

It occurs to us to add that we fully acknowledge the hard position in which a nationality sometimes finds itself through the legitimation of a usurping government. It is hard on an old nation to find itself deprived of all hope of ever again regaining its independence, except through constitutional means which may be futile, or by violation of the natural law. But it has to be remembered that the title by which the legitimation of the usurper is effected is grounded primarily on the needs of the people. It is their need of a government in order to secure order and tranquillity, and not

the fulfilment of the usurper's ambitions, that forms the chief natural ground of legitimation in the case of a *de facto* government. This fundamental title is then later supplemented by other needs and rights of the people, those, viz. that give rise to prescription, and by acts indicating popular consent.

Much, therefore, though one may sympathise with the hard fate of a conquered nation * there can be no doubt about the moral principles governing their position. If government is legitimate the people have to stand by the principle that a legitimate government has a right to the allegiance of its subjects. Of course it takes a long time before a usurping government is legitimised, but once legitimised, the people are bound to give it due obedience and respect. But whatever may be the duties of a conquered nation in respect of the legitimised government, there always remains to it a natural right of self-defence should the government ever become gravely tyrannical or oppressive. This right will be treated in a later section where the grounds and conditions of lawful resistance to oppression are fully explained.†

EXCLUSIVE ABILITY TO GOVERN

In Politics we have to take account not only of normal but also of abnormal and almost unaccountable conditions. It is for this reason that we venture to call the reader's attention to one additional title of political authority, of which under normal conditions he could not reasonably be expected to take serious account, viz. exclusive ability to govern. As long as men are men, individuals will be found vain and foolish enough to imagine themselves the chosen of the gods and alone

* The lot of a conquered nationality ought to be made as easy as possible, and as much political liberty ought to be allowed it as is consistent with the safety of the State. If possible it should be accorded the right of self-government as was shown in our discussion on nationality, p. 511.

† p. 542

fitted to direct and govern the multitude. But circumstances may arise in which a particular individual may really stand out, either through his own paramount excellence, through the degeneracy of all the others, or because of mutual jealousies and rivalries, as alone fitted to take on the *rôle* of ruler, and in that case nature will not set up an opposing plea of vanity or presumption, but will accept even this self-constituted ruler, and confer on him the necessary authority for the sake of the good that he may effect.

These, it seems to us, are the chief titles operative in the setting up of the State. But once in being, the State may adopt any other title suited to its particular circumstances and needs.*

The Consequences of Authority

To every right there is a correlative obligation. Corresponding to the right of the ruler to direct his subjects there is imposed on these subjects an obligation of obedience, respect, co-operation. The citizen is bound to obey the laws of the State, provided that

* From what precedes, it is clear that the theory of the *consent of the governed* as the only rightful title of political authority cannot be sustained. There are other rightful titles also as we have just shown. Besides, the theory, it seems to us, is based on a completely false reading of the rights of the people in the State. Because, it is concluded, the *end* of political authority is the welfare of the people, therefore political authority *proceeds* from the people. These two conceptions are obviously distinct.

We are, however, prepared to make certain concessions to the present theory. First, we admit that the consent of the people is the best of all titles. Secondly, where consent is wanting over a long period, its absence might suffice to make a certain form of government wholly impossible, in which case a ruler might even be bound to abdicate for the sake of the public good. Thirdly, the development of the republican ideal, and the increasing power of the masses in the modern State are gradually rendering the consent of the governed more and more indispensable, at least as a condition of rightful rule. Fourthly, any wide acceptance, by the existing rulers, of this principle of popular consent as the only title of political authority might itself confer upon the people the right of originating and determining the form of government, which, once obtained, could then not lawfully be removed from them without their consent.

these laws fulfil all the conditions required for validity, *i.e.* that they are made by a properly constituted ruler, that their enactment fulfils the technicalities, if any, required by the constitution, that their fulfilment is possible, that they promote the public good in some way, that they are not opposed to the natural law. Only where a law is *obviously* invalid as failing to fulfil these conditions is the subject justified in declining obedience to it. There are even cases where a subject might be bound to conform to a law which he knows to be invalid, where, viz. conformity with it is not sinful, but where also it is necessary in order to avoid grave public evil.

Again, subjects should treat their ruler with respect. Respect is the recognition of superior excellence in another, and the ruler from his position is superior to the subject ruled. Respect indicates acknowledgment of his right to rule.

Subjects should also co-operate with the ruler in promoting the public welfare. The law to promote the welfare of society is first of all a law binding society itself, and it is only because society cannot achieve this end without a ruler that the ruler is appointed with the express office of taking the means necessary to its attainment. But if the obligation to promote the general good binds the State from the beginning, it is surely the duty of the members of the State not merely to obey the laws of the ruler but also to desire the common good, and also, as far as in them lies, to co-operate with the sovereign ruler in promoting it.

Opposed to this duty of obedience, respect and co-operation there are three classes of sins—first, *disobedience* to the public laws; second, *disrespect* for authority; third, *rebellion*. Of these three sins the last is the gravest and most terrible. Disobedience is in a sense a purely negative attitude of the subject. It means simple non-conformity with the laws. Disrespect, though a serious sin, is yet compatible with the acceptance of

one's position as subject, and of one's recognition of the rights and position of the ruler as head of the State. Rebellion is a complete reversion of the position of ruler and subject. It is the gravest of all possible crimes against the State. For that reason it will be necessary to say a few words on the nature of rebellion, and on the question of its unlawfulness.

ON REBELLION

Rebellion is an act of armed aggression on the part of the citizens against the government.

First, rebellion is an act of physical violence, of armed attack. No degree of moral opposition to the government, even though provocative of widespread disaffection, could constitute a rebellion. Secondly, rebellion is an armed uprising, not against a particular minister or party, but against the crown, the constitution, the sovereign ruling authority. Thirdly, rebellion is an act of aggression. In rebellion it is the citizens who take the offensive against the government, just as in murder it is the murderer who first attacks. We do not speak of the act of a man defending himself against an unjust aggressor as murder, even though his act involves the death of the aggressor. So also, when the citizens defend themselves against tyranny and grave oppression on the part of the government their act is one not of rebellion,* but of self-defence only. In rebellion, we repeat, it is the citizens who take the offensive against the government, making an unprovoked attack on it, in order to effect its overthrow.

That rebellion is a sin, a violation of the natural law, can easily be established. First, a lawful and authoritative government has a right to obedience from the citizens, *i.e.* its laws should be obeyed; and therefore any attempt to overthrow the government by armed violence is unnatural and wrong. Such an act is not merely an act of disobedience, but it is the most radical act of disobedience conceivable, since it strikes at the very source and fountain of law itself —the sovereign government. Secondly, rebellion is a complete reversal of the natural order. The attitude which nature requires in a person who is subject, is an attitude of subjection, of submission. In rebellion this order is reversed.

* See A. Meyer, S.J., "Institutiones Juris Naturalis," II. 509 and 516.

The subjects subject the ruler to themselves, and in the most extreme manner possible by attempting his overthrow. There could be no more direct or unequivocal perversion of the natural order than this. Thirdly, rebellion is a crime against the community, for, if government is necessary for the welfare of the community, rebellion reverses this condition and leads invariably to confusion, disturbance, and irretrievable loss.

Rebellion, therefore, is always a de-ordination and a crime. It is always a violation of natural law And since the natural law is rooted in the eternal law of God, and since all civil authority, being of natural law, is also ultimately from God, so rebellion is a grave violation of the Divine Law, and a grave sin.

We now come to the problem of the position of the people under a tyrannical government. What if the sovereign should become tyrannical, tyrannical, that is, not necessarily in the sense of cruel, but in the Aristotelian sense of ruling unjustly in his own interest or in that of a section of the people only? Have the people no remedy against such injustice and oppression? We answer—every man and every body of men is given by nature the right of self-defence against unjust aggression, and this right holds good no matter what the source from which the attack proceeds—whether it comes from some private individual or from the head of the State. And, therefore, the people have a right to resist and defend themselves against injustice, and to take all the necessary means of defence, even the dethronement of the ruler.

Such resistance is not to be spoken of as rebellion, which, as we have said, always denotes *aggression* on the part of the people. It is an act of self-defence and nothing more. It is no more rebellion than disabling one who has the strangle grip on another and attempts to kill him is murder. This is not a question of names only, it is a question of fact and reality, with immense significance in the moral law. Resistance in self-defence is not a crime, it is an act wholly different from that of unjust aggression, and we have no right, therefore, to include it in the same category as rebellion, which is essentially an act of aggression.

Nor can it be said, when resistance is resorted to in self-defence, that the people are responsible for the consequences, It is the tyrannical ruler, and not the people, who is responsible for those terrible consequences that always accompany an uprising of the people, since it is he that

provoked the people into resistance. "A tyrannical *régime*," writes St. Thomas,* "is never just, because it is ordained, not to the good of the people, but to that of the ruler himself (this being the definition of tyrannical rule). And, therefore, to disturb a *régime* of this kind is not sedition . . . rather it is the tyrant who is guilty of sedition by sowing discords among the people in order that his dominion over them may be the more secure." It is the undoubted right of every man to defend himself against unjust aggression (some necessary conditions being fulfilled) in spite of the indirect consequences.

We see, therefore, that the people have a right to defend themselves against a tyrannical government. But to resist the government is always an extreme measure, and, therefore, it can only be resorted to in extreme cases and under certain well-defined conditions of natural law. Four such conditions have been enumerated by a very eminent writer on the subject of resistance to the civil authority. "Resistance is lawful," he writes,† (1) when a government has become substantially and habitually tyrannical, and that is when it has lost sight of the common good, and pursues its own selfish objects to the manifest detriment of the subjects, especially where their religious interests are concerned; (2) when all legal and pacific means have been tried in vain to recall the ruler to a sense of his duty; (3) when there is a reasonable probability that resistance will be successful, and not entail greater evils than it seeks to remove; (4) when the judgment formed as to the badness of the government, and the prudence of resistance thereto, is not the opinion only of private persons or of a mere party, but is that of the larger and better portion of the people, so that it may morally be considered as the judgment of the community as a whole."

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* "S. Theol." II. II., Q. XLII. 2. The reference here to sedition needs some explanation. St. Thomas is showing that sedition (in its technical sense of sowing discord amongst the people) is always unlawful. By way of objection to this thesis he then asks whether it is not lawful to free a people from the yoke of a tyrant; and since this is always accompanied by dissensions, some wising to follow the tyrant, some the opposing leaders, would it not seem that sedition or causing dissensions amongst the people is sometimes lawful? He then gives the answer quoted in the text above.

† We follow Father Rickaby in taking our statement of the conditions necessary for lawful resistance to government from an article in the *Dublin Review* for April, 1865. It is the briefest and the best statement of these conditions with which we are acquainted.

The enumeration of these conditions suggests certain important considerations. (1) The people cannot resort to physical resistance for the redress of any and every grievance. If they could, the normal condition of every country would be one of civil war, and peaceful progress would wholly cease. In every nation there are innumerable conflicting interests to be considered and some people are bound to suffer injustice. These ordinary injustices the people should aim at remedying by constitutional means only. Resistance to government can be tolerated only in the case of a government that has become substantially and habitually tyrannical. (2) The conditions of lawful self-defence are substantially the same in the case of resistance to individual private aggression and that of aggression by the government. Now, in the former case, a man cannot kill another in self-defence if he can escape the aggression in any other way. So also if a tyrannical government may be brought to reason by constitutional means it has a right to be brought to reason by constitutional means. In this connection it occurs to us also to remark that under modern conditions it is not always easy to imagine a set of circumstances which would justify a people in offering armed resistance to the Crown even in case of oppression. In most civilised countries the people are given by the constitution full and effective means for calling an oppressive government to account, and of speedily rendering it impotent for evil. In a Republic, president and government can be rejected at the polls: in monarchies that are subject to the system of Parliamentary government, like England, Italy, Belgium, the real executive *i.e.* the Cabinet, can be made to resign; whilst in Germany the representatives of the people can make government impossible by refusing supplies. In all these cases, of course, tyranny may be possible, but it cannot be long-continued, and is generally not hopeless. (3) There must be a hope of success, *i.e.* a hope that the tyranny exercised by government will be brought to an end, or at least that the beginnings of improvement may be effected. (4) In most countries there is a party known as the revolutionist party that would undertake to direct the people and compel them to rise in resistance for "the people's good." In most cases these revolutionary parties look to their own good only; but whether they do or not they have no right either to drive the people to resistance against their will, or to initiate resistance unsupported by the mass of the people. If the people are satisfied with the government or satisfied to wait and to seek redress by constitutional endeavour (and they

should do so if such means offers a hope of success) then no party has any right to resort to any other means, much less to compel the people to rise.*

The Attributes of Political Authority

The attributes of political authority are determined by the nature of political authority and the nature of the State. They are—*unity* and *sovereignty*.

on unity

The supreme political authority must be one. By this we do not mean that it must reside in one person —it may be borne by a large number of persons. Neither do we mean that it is necessarily undivided. The various parts or functions of political authority may be divided amongst many persons or bodies, each distinct from, and independent of, every other. For instance, in the United States the supreme legislative authority lies in Congress, the supreme executive authority vests in the President. By the unity of political authority we mean that, just as in the living body there cannot be many lives, but only one, from which vitality extends to all the members, so in the State there can be only one supreme authority directing the community to its end, and the supreme ruler will be that person, or body, or group of bodies in whom the supreme authority resides. One State, one supreme ruler, one authority. An organism that was informed by many lives would be, not one organism, but many; or rather, it would not be an organism at all, which essentially implies unity and harmony in its parts, but an inorganic substance manifesting different and opposing attributes, and torn by distracting and dissentient forces. So, also, if there were many supreme authorities in the State the people would be constituted into many States, not one, and the whole community would be directed

* See "De Regimine Principum," I. 6. For the special question of resistance by a conquered nation see p. 536.

not to one but to many and opposing objects. The same reasoning that demonstrates the necessity of a ruler in society, implies also that the supreme ruler should be one, one person or group of persons, and, therefore, the supreme authority should itself be one.

ON SOVEREIGNTY

The conception of sovereignty.

By sovereignty is meant the legal supremacy * of the State. It is made up of two elements—a *positive* and a *negative* element. Sovereignty confers on the ruler of the State a positive right of supreme rule, a right to command and direct the people in everything necessary for the good of the body politic. The negative element implied in sovereignty is that of complete legal independence of other States. The positive element in sovereignty it will not be necessary to discuss at this point, since we have already fully examined the rights which nature confers on the State in reference to those subject to it. But it will be necessary to get a clear idea of what is meant by legal independence as an attribute of the State.

Sovereignty is, above all things, a *legal* conception. It means that in law (the natural law of course) the State has a *right* to certain things. Physically a State might be prevented from using its powers and rights in particular cases, but the legal or juridical rights conveyed by the term "sovereignty" will remain as long as the State remains. Again, sovereignty implies the legal *independence* of the State, *i.e.* its complete independence of other States. Now the independence of the State in the present connection is a very technical conception that needs to be carefully interpreted. It means the same thing as the complete *self-dependence* of the State, or the fact that its rights derive *from itself*, are native to

* As appears later it might be more correct to say that it consists of *radical* legal supremacy.

itself, that they are *not merely delegated* to it by another State, or exercised by virtue of powers conferred on it by any other State or body. In other words, independence means that legally and juridically the State is not subject to any other political body. Any community that exercises its powers by virtue of authority conferred on it by another, or in the exercise of which it is legally subordinate to another, cannot be supreme or sovereign, and is not a State. Canada and Australia, though possessing a high degree of autonomy, are not sovereign communities and, therefore, are not States. Their powers are derived from, and are exercised under the superior jurisdiction of Great Britain.

But this legal independence as an attribute of sovereignty requires to be still further examined. A State might *de facto* be largely dependent on other political bodies and be very far from enjoying complete freedom of action; it might actually contract away a great deal of its freedom, and be bound by innumerable obligations towards other States, and still be sovereign. Every State in the world is to some extent bound by obligations to other States, they are to some extent, therefore, dependent *de facto* on one another. They are not wholly free in their dealings with one another. Sometimes the limitations placed on their freedom are self-imposed, that is, they are imposed by treaty: sometimes they are not. After the Franco-Prussian war Prussia imposed obligations on France, the imposition of which obligations France could not resist. Yet France remained sovereign. Why? Because it still retained all the legal or juridical authority required for a State, and that authority was original and underived. Its authority was not delegated to it by any other power. There are countries which enjoy very little *de facto* freedom of action in regard to the things that are essentially functions of State. Afghanistan allows all its external relations to be regulated by England; both England and Russia enjoy very wide

powers over Persian finance; France and England exercise a large control over the government of Morocco. Yet these are sovereign States. They are sovereign because, even though they are not allowed to use their powers with all the freedom of other States, yet their powers are their own, their authority is original. It is not delegated authority derived from other States. Between the years 1904 and 1910 the independence of Korea was exceedingly attenuated through the control over its affairs assumed by Japan. Japanese financial and diplomatic advisers * were appointed to manage the various departments of Korean administration. In 1905 it was even settled that the Japanese Foreign Office should direct the external affairs of Korea. And yet during all that time Korea was treated as (and was) fully sovereign. In the comity of nations it counted as an independent State, and diplomatic representatives from foreign powers were accredited to it. Later, however, through its annexation to Japan in 1910, it lost its sovereignty and ceased to be a State.

From these instances it is evident that a State may possess sovereign authority and be treated as a sovereign person in International Law, even though it is not free in the actual exercise of its powers, just as a man may still be a human person though deprived of liberty. A community is sovereign as long as its authority is its own and not derived from other States. And thus we are confronted with the strange contrast of countries like Australia, enjoying almost complete freedom, which yet are not sovereign, and a country like Persia, weighed down with all the encumbrances that foreign governments have successively imposed upon her, which yet is sovereign. The reason is that the Australian Commonwealth derives all its authority from England; the old-world authority of Iran is from itself.

Granted then that a State is radically self-dependent, in the sense explained, its freedom may *de facto* be

* See Lawrence, "Principles of International Law," p. 67.

limited in many ways, but, as Bryce remarks,* " third parties (*i.e.* other States) are not *prima facie* bound to pay any regard to the fact that the inferior State is *de facto* dependent. They may properly treat it as being completely sovereign."

The content of sovereignty.

(*a*) Sovereignty includes full legal control over all affairs of State (that is, the things required by the common good) both in its external relations and in regard to internal government. Some writers † maintain that sovereignty includes a right of control over the internal affairs only of the State. But sovereignty is a superlative term and connotes the fullest independence in regard to all affairs. A community which is independent in regard to internal matters, but in its external relations is subordinate to another community or another body, is not a Sovereign State, and, therefore, not a State in any sense. Indeed, if sovereignty were to cover any part of the affairs of the country it should more rightly cover its external relations than what are properly internal matters, since sovereignty is primarily an international conception; it means, above all things, supremacy as against, or complete independence of, other States, and, therefore, a right of defending itself against other States. But, whether external or internal control is primary, it is certain that both are necessary for sovereignty, and that a nation which could control its internal affairs but not its external, could no more be spoken of as sovereign in the proper sense than a man could be spoken of as independent who had from nature a faculty of control over his thoughts only, and not over his external movements.

Case of the United States.—We know that the component States of America are often spoken of as sovereign,

* " Studies," II. 103.

† *e.g.* Cathrein, " Moralphilosophie," II. 540.

and to this fact appeal is sometimes made as showing that internal control is sufficient for sovereignty, this being the extent of power which these several States enjoy. But by the sovereignty of these States is meant merely that the federation is not sovereign over them as England is sovereign over Australia, that the component States do not derive their jurisdiction from the federal Parliament, that their authority is original and even preceded the founding of the federation, and that, in the constitution of the United States, the federal government has only definite powers assigned to it, the whole residue being still in the possession of the component States. But the component States are not sovereign in the proper sense either in Germany or in America. Just as the powers of sovereignty are divided in England between King, Lords, and Commons, so they are divided in America * between the rulers of the component States, the rulers of the federation, and the people of the whole country. We include these latter because to them special legislative powers have been accorded in regard to measures designed to effect changes in the constitution.† Being possessed, therefore, of only a share in the powers of sovereignty, the component States cannot be spoken of as sovereign. Neither, of course, are they States in the proper sense of the word, since sovereignty is an inseparable characteristic of the State.

(*b*) Sovereignty, therefore, implies a right of control over all affairs of State, external and internal, but, as we have remarked already, *only in so far as the good of the State* requires. For the most part, of course, the rulers of States are themselves the best judges of the needs and interests of the community; but we insist on our present limiting condition because it has been contended by certain writers that the sovereignty of

* As Bryce insists, it is absurd to think that sovereignty must necessarily rest in one determinate person, or body. The powers of sovereignty together make up the sovereignty of the nation, and these powers, as is shown in the text, may rest in many bodies each independent of the other. The sovereignty of the United States lies within the United States, but divided over many bodies and centres.

† No such powers are enjoyed by the people of England. No doubt the people elect the members of parliament and, therefore, designate the rulers, but no part of the actual ruling of the country is entrusted to them as is the case in America. In England, therefore, the people do not share in the nation's sovereignty.

the State extends to every kind of act, whether good or bad, that it cannot be limited by moral considerations of any kind, that, in fact, anything that the State desires, it has a right to do. "A modern judge," writes Dicey,* "would never listen to a barrister who argued that an Act of Parliament was invalid because it was immoral or because it went beyond the limits of Parliamentary authority. The plain truth is that our tribunals uniformly act on the principle that a law alleged to be bad is *ex hypothesi* a law and, therefore, entitled to obedience by the courts." And Sidgwick insists † that the authority of Parliament is absolutely unlimited "in the ordinary consciousness of English citizens," and that "in endeavouring to ascertain what the law of England is we never ask what Parliament has authority to do, but only what it has done." He claims also that "any language which encourages a man to claim as valid, here and now, rights not actually secured by the established law of his country, is dangerously revolutionary."

But surely there are moral limitations to the rights of Parliament and of the State. Surely if Parliament ordered the indiscriminate massacre of a portion of the people, say because they were Protestants or Catholics or Jews, or because they were a trouble to the government, no judge would regard a law of the kind as valid. But whether the judges see their way to administer a law of the kind or not, or whether to oppose it is dangerous to public order or not, or whatever may be the mentality of British citizens, such an order as this would be opposed to the natural principles of justice, and would not have the force of a law, and every citizen would have a clear right of opposing its execution. The civil powers have a right to act for the good of the community. They have no right to do what is clearly wrong, immoral, or unjust, and they have no right to force on people courses of action which are either unjust or *manifestly*

* *op. cit.* p. 60.
† "Elements of Political Science," p. 24.

absurd or unprofitable. The natural law is above the civil law, is deeper and more fundamental; it is itself the ground of the civil law, and gives to the civil powers all their authority. The civil law, therefore, cannot act in contravention of the natural law, and laws enacted in contravention of nature are invalid from their very foundation.

Sovereignty—a necessary attribute of State.

That sovereignty is a necessary attribute of the supreme political authority in any State scarcely needs to be established, so evidently is it contained in the very notion of the State. The State is the highest possible natural society; its end is the highest and the widest that can be entertained, and that is attainable by natural means, viz. the good of the race. It includes, as we saw, everything that is needed for human welfare and development. And since this end is the widest possible, so the end of the State cannot be included in the end of any other natural institution, and, therefore, it is independent of every other natural institution.* This is the first, the negative element in sovereignty—complete self-centredness and independence. The positive element is obviously also included in the nature of political authority. The end of political authority is the good of the whole community, and since the general good is superior to the good of the part, so political authority confers a right of direction over all the parts of the State, and a right to command these parts in so far as the good of the whole requires. Sovereignty is,

* The question might be raised—Is not the good of the whole race wider and higher than the good of any part of the race, and, therefore, may not sovereignty vest in the whole race only and not in the State? We answer, the State is a self-sufficient community, and, therefore, as a living thing it is quite independent of the rest of the race, and would still have the same powers and attributes that it has, even if the rest of the race were to disappear. Complete powers, therefore, vest in it independently of the other parts of the race. It is, therefore, completely sovereign.

therefore, a natural attribute of the political authority of the State.

Some modern writers * have maintained that sovereignty is only an "historical category," *i.e.* that it was not an attribute of all the earlier States, that it became prominent as a feature of State authority only in recent times, that, therefore, it is not essential to the State. The chief grounds appealed to in favour of this view are, *first*, the fact that in ancient and mediaeval times certain communities that were admittedly States acknowledged a certain subordination to other powers, *e.g.* the ancient Roman States acknowledged the sovereignty of Caesar; some of the old State towns admitted the supremacy of the League; the feudal States owed allegiance to the Emperor; *secondly*, the conception of sovereignty was a gradual development, and was finally and fully developed only in Bodin's time or later.

Now, these difficulties should not be allowed to militate against sovereignty as an essential attribute of the State, since, as we saw, it is contained in the very conception of the State. The first argument serves only to prove that either some of those ancient and mediaeval communities which are sometimes spoken of as States were really not States in the true sense of the term, but provinces or dependencies of States, or that if they were States they were Sovereign in spite of certain allegiances owned by them, just as in modern times there are States admitted into the comity of nations and treated as fully sovereign in spite of certain admitted elements of dependence. From the second argument the only conclusion that follows is that an attribute may be present even though the conception of it grows and clarifies with time. In ancient and mediaeval times States were not as clearly marked off from one another as they now are; their competing interests were not so defined; and, therefore, the conception of sovereignty was not so prominent and did not need such full and clear definition as is at present the case. But any community which was indisputably a State was sovereign in ancient and mediaeval times as well as now.

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* Jellinek—"Das Recht des Modernen Staates."

The seat of sovereignty, or, where sovereignty resides.

Sovereignty does not necessarily reside in any one person or body, since sovereignty is not indivisible. All sharers in the supreme governing authority, all those who exercise governmental authority which is not delegated authority, are sharers in the sovereignty of the State, and these constitute between them the seat of sovereignty. In England, King, Lords, and Commons constitute the seat of sovereignty. They are the supreme rulers, exercising between them the functions of legislation and administration, whilst the judicial authority they *delegate* to the judges to be exercised on their behalf. The people in England are not sharers in the sovereign authority because they do not exercise governmental authority. Their function is to appoint a portion of the ruling body (*i.e.* the members of the House of Commons) but they do not themselves rule or exercise any ruling function; the sovereign is he who exercises supreme *ruling* authority.

The people, of course, exercise immense power in England, since it is their right to appoint the rulers. For that reason some writers have attributed to the people of England a special kind of sovereignty which they speak of as "political sovereignty," and which, they tell us, is to be carefully distinguished from the "legal sovereignty" of the ruler proper. But, as we saw before, sovereignty is essentially an attribute of the authority of the ruler, and, therefore, only the ruler has sovereignty of any kind. It should, indeed, be possible to discover a special word that would express the special and immense power which the English people wield over legislation through their right to elect the legislators. But sovereignty, even though modified by the word "political," is not the word.

In America, on the other hand, the people are really sharers in the sovereignty of the State. For not only in America is Congress elected by the people, but the

people exercise a special and most important function of government, viz. the legislative function of altering the constitution. In America, sovereignty is divided amongst many bodies and persons—the State governments, the federal government, and the people exercising their right of altering the constitution. And since this latter right is the most fundamental of all, the people are sometimes said to exercise complete sovereignty in America. The people, however, do not exercise complete sovereignty. Sovereignty is shared by the State and federal governments also. The authority of these latter bodies is not delegated by the people. Their acts are valid, even though they may run counter to the wishes of the whole people.

SOME POINTS IN REGARD TO SOVEREIGNTY EMPHASISED

(1) "The kind of sovereignty we have been considering," writes Bryce,* "is erected by and concerned with law only. It has nothing to do with the actual forces that exist in a State or with the question to whom obedience is in fact rendered by the citizens in the last resort. . . . The actual receiving of obedience is, therefore, not (as some have argued) the characteristic mark of a sovereign authority."

Whether any writer has at any time been bold enough to identify in general terms the two conceptions of sovereignty and the possession of supreme physical overbearing power, we do not know, but it is certain that theories are held in which these two conceptions tend to coalesce, and in which such statements occur as that, even though physical might is not the definition, it is at least an inseparable characteristic of sovereignty.

Now, that physical might is neither the definition nor an inseparable attribute of sovereignty is certain. If it were, there would exist on earth no person or body that could be described as sovereign. For there is no government that is so strong as that it could resist the whole organised opposition of the people. But then it will be said with Rousseau, that sovereignty resides with the people, with the *volonté générale*. We answer that even if this were true our contention would still hold good, for, first, there is no

* "Studies," II. 56.

selves; and secondly, there is no people and no government that could effectively resist the combined opposition of all other governments and peoples. If, therefore, actual might or physical fitness to overbear all opposition is a necessity of sovereignty then there could be no such thing as sovereignty in the world. Evidently, therefore, the conception of sovereignty contains some element besides that of mere physical constraining power.

(2) *Austin's theory of sovereignty* is closely allied to that which we have just been criticising. According to Austin, that is the sovereign power which is itself not subject to another power, and to which obedience *is habitually* accorded by the great bulk of the people. He raises no question as to whether for sovereignty obedience *ought* to be accorded or not; if it really *is* habitually accorded to any power, that power is sovereign. Now it will readily be conceded by us that in most States the sovereign power does really command the habitual obedience of its subjects, and that as a rule the two conceptions are at least co-terminous. For this reason, also, the rendering of obedience is generally to be regarded as a good working test of sovereignty, in the sense of affording a clear indication of where sovereignty lies. We go farther, and insist that habitual obedience to a given person or body of persons might in some cases operate as a title to sovereign authority, and place the supreme political rights in the hands of some person or persons who otherwise might have no title to rule; and this view is all the more easily defensible since the word "habitual" may be interpreted as indicating a very long period of time—as it evidently indicates much more than obedience tendered during short or intermittent periods. If the great bulk of the people paid willing homage for a hundred or two hundred years to someone as their supreme ruler, such a person, even if there were no other title, might readily make appeal through such homage to some one of the natural titles of authority already enumerated, as entitling him to the supreme and sovereign right to rule.

Nevertheless, it is impossible to accept even the rendering of habitual obedience as a complete or even correct definition of sovereignty. For, first, it is not absolutely coterminous with sovereignty; sovereignty may be present without it. If a new State were created, its government would be sovereign from the first day of its appointment, and for that day or for very long afterwards there could be no ques-

tion of its having received habitual obedience. Secondly, a people might be in rebellion for a very long time, having, let us say, resolved on anarchy, so that it could not be said that obedience, actual or habitual, was being paid to anybody. Nevertheless, in that case the existing government would be fully sovereign, and would have a full right of coercing the bulk of its subjects, of punishing them, and of using all the resources at its command against them. Thirdly, even if sovereignty and the habitual enjoyment of the people's obedience were coterminous, the two conceptions are not identical, and one is not to be accepted as a definition of the other, since habitual obedience presupposes sovereignty, is a result of it, *i.e.* is rendered because the ruler is already regarded by the people as legally sovereign. But what presupposes and normally results from sovereignty cannot be said to constitute it or to be its definition.

From all this it is evident that Austin's definition falls short of the reality, because it ignores the really salient element in sovereignty which is the *right* to exact not only habitual but actual obedience. Any definition that fails to take account of this juridical or moral element will always be found, because it is inadequate, not to square with the facts. Philosophers may attempt for purposes of scientific precision to eliminate this intangible element, as it is called, the element of natural right, but in the last resort it is on this element that the State will generally be found to rely, not to beat down opposition when it arises, for which, of course, the exercise of physical force is the only ultimate remedy, but to prevent opposition by securing a willing obedience on the part of reasonable people, and also to defend the lives and liberties of the people against foreign powers.* There is no nation that will not claim that its *rights* have been violated before going to war with other nations.

* The theory defended by Seeley (*op. cit.*) and by Green ("Lectures on the Principles of Political Obligation") that sovereignty properly resides with the people because it is the good will of the people that renders government stable, may be answered from the arguments given in the text above. It is just a special form of the theory that identifies sovereignty with might.

The theory of Rousseau that sovereignty is indivisible and that, therefore, it has only one chief function, viz. legislation, is too obviously false to be considered here. Government is an older and more indispensable function of sovereignty than legislation; also in nearly every State the two forms vest in different bodies, each independent of the other.

CHAPTER XVII

ON THE FORMS OF THE STATE, AND ON CONSTITUTIONS

CLASSIFICATION OF THE FORMS OF STATE

A QUESTION that may reasonably be asked in reference to the subject-matter of the present chapter is whether any real classification of States is possible, *i.e.* whether it is possible to discover a few fixed categories or types which will really include not only all existent but also all the possible forms of State. The difficulties in the way of such classification are many and obvious. First, there are the *number* and variety of States; every country seems to adopt a form peculiarly its own, and to develop along lines suitable to its own needs; secondly, the various forms of State are not *given ready-made in nature*, but are devised to meet the circumstances of each case, whereas classification presupposes a number of *fixed* forms or types to which all must conform, if not completely, at least in a very large degree; thirdly, such forms as do exist are not *distinct* but grow into one another, passing through numerous transitional forms, each as important, because as real, as what are supposed to be the main types, whereas the problem of classification would seem to require a definite line of division between the forms of State; fourthly, whereas in nature one form of being *excludes another* (the same thing, for instance, cannot be a dog and a rose-tree, a man and a tiger) in a single State any form may be united to any other and even to all the others. In Germany, for instance, there is hardly any form of State which is not expressly and distinctively included in the constitution. The conditions therefore required for classification would seem not to be fulfilled in the

present case, viz. a comparatively small number of original and fixed forms, distinct from each other, each not derived from the other, and each exclusive of the other, just as the main types of plants and animals are distinct and exclusive.

In spite of these difficulties, however, we believe that a satisfactory classification of States is not impossible, that given a suitable basis it is possible to enumerate *a priori* a definite set of forms, which will not only prove in the abstract exhaustive, but will also be found to include all forms of State empirically known to us—the transitional as well as the more defined and prominent types, the most complex as well as the most simple.

But the question now arises—on what basis shall we proceed in our division? Evidently the fundamental basis is one only. Since government is the first essential in any State, States will naturally be classified, in the first instance, on the basis of the form of government employed. The present problem, therefore, of State-classification reduces to, and is identical with, the problem of the classification of the forms of government; and it is with this problem that we shall occupy ourselves in the first section of the present chapter. We shall have to enquire what are the leading forms of government and on what basis these forms are classified. This problem of the chief forms of government being once determined, it will then be open to us to consider other less fundamental systems of classification which we hope will prove of some interest to students of modern politics.

In our classification of the various forms of government we are naturally led to follow the time-honoured division given in the Politics of Aristotle. "Government," says Aristotle,* "which is the supreme authority in States, must be in the hands of one or of a few or of many. The true forms of government, therefore, are those in which the one, the few, or the many govern."

* "Politics," III. 7.

To these three forms of government he gives the names *kingship* or royalty, *aristocracy*, and *polity*, or what a modern would speak of as *democracy*. In all these forms it is supposed that the ruler governs in the interest not of himself but of the community at large, for which reason they are spoken of as good or right (ὀρθαὶ) forms. Corresponding to them Aristotle distinguishes three bad or perverted forms (παρεκβάσεις) in which the ruler is represented as governing in his own interest and not in the interest of the community at large, viz. tyranny, oligarchy, and ochlocracy * or mob-rule. Of the perverted forms it will not be necessary to say more at present, but it will be necessary to speak at some length of Aristotle's well-known division of the forms of government into monarchy, aristocracy and democracy.

Basis of the classification.

The old problem whether Aristotle's classification of the forms of government is based on quantity or on quality is interesting and not without its importance in Political Science. The form in which the problem is usually put is not a little misleading, for it would seem to imply that only one of the two conceptions, quantity or quality, can be made the basis of division. As we shall see presently, however, both conceptions are utilised by Aristotle in effecting his classification.

The first step in the present division of the forms of government is based on quantity alone. Government, Aristotle tells us, must necessarily take one of three forms, government by one, by the few, or by the many. But these forms are capable of further division † upon another basis, viz. quality. For government by the few may consist of government by the few rich and

* The word used here by Aristotle is "democracy." But as this word has now been substituted for Aristotle's term, "polity," we use the expression *ochlocracy* to signify the third perversion.

† The old rule of Logic forbidding changes in the basis of classification applies only to each step in the division. Each step should be based upon one conception.

powerful or the few poor; and government by the many may be by the many rich or the many poor. Now government by the few poor is quite impracticable, since fewness and poverty are no recommendation in any ruling class.* And government by the many rich is impossible, for never has it been heard of (except, says Aristotle,† after the battle of Colophon) that the many have been rich. We are then left with three possible and practicable forms of government, government by one (or monarchy), by the few rich (or aristocracy) and by the many poor (democracy).

We have now to bring under the reader's notice certain important matters in connection with this division. First, the grounds to which rulers may logically make appeal as entitling them to rule will be found, according to Aristotle, to depend on some of the conceptions underlying the second division, not the first, quality not quantity. The monarch does not govern simply because he is one, but because he is the one wise or great man of the community.‡ An aristocracy does not govern because it is small, but because it is rich or powerful, or wise, and because, says Aristotle,‖ "they have a greater share in the land, and land is the common element of the State; also they are generally more trustworthy in contracts." If mere fewness formed the requisite title and constituted an aristocracy or oligarchy, then "a government § in which the offices were given according to stature, as is said to be the case in Ethiopia, or according to beauty, would be an oligarchy, for the number of tall or good-looking men is small."

* *a fortiori* government by *one* who is also poor or weak would be impossible. It is important to note that the quality to which Aristotle gives such prominence here is only meant to serve as one example—a chief example—of the qualities required in a ruler. Wisdom and virtue will also count as well as riches.

† "Politics," IV. 4, 5.

‡ For this reason Aristotle expressly states that the rule of the one belonged to a period when communities were small, and wise men were scarce (III. 15, 11).

‖ III. 13, 2.

§ IV. 3, 4.

And the many in a democracy do not govern simply because they are many, but because, "when taken together collectively and compared with the few, they are stronger and richer and better." * But since this necessary superiority in the multitude presupposes the equality of all (for if men were not equal the few might have the advantage, the few clever, for instance, being equal to the many stupid), and particularly equality in merits and goodness and rights, the claim of the many to rule is, therefore, based upon the principle of the equality of all. The right to rule in any particular form of government is, therefore, based, not on number, which is "but an accident," † (if aristocracy, he tells us, is always the rule of the few it is simply because the rich *happen* to be few) but on some one or some group of the many qualities which are supposed to aid the ruler in his work and confer on him a right of government.

Secondly, if Aristotle does not in this opening division enumerate the mixed forms, it is not because he was unaware of the possibility of such forms (they are freely mentioned later in his work) but because for purposes of classification it was not necessary to take account of them; on the contrary, to take account of them would be to complicate the problem and increase the difficulty of classification exceedingly. Various modifications of government are possible, due to the mingling of these forms in varying degrees, but the three forms given by Aristotle still remain the original simple types, out of which all others are constructed, just as different plants may still remain essential types, though several of them may happen to be grafted on a single stem.

Thirdly, Aristotle's classification considers governments in actual existence (*in facto esse*), not in their becoming (*in fieri*). It is for this reason that no account is taken in his classification of the manner in which the

* III. 13, 4.
† III. 8, 6.

monarch comes to the throne, *e.g.* of the distinction between hereditary and elected monarchies, of which distinction he nevertheless makes formal mention elsewhere.* He has but one problem to consider in this work of classification, viz. the problem of the forms under which States *are* actually governed. For this reason also his classification takes no account of the length of the ruler's tenure of office, or the degree of jurisdiction possessed. All this is beside the mark.† Elsewhere he tells us that a monarch may be absolute, governing according to his own will, or constitutional, in the sense of governing according to fixed and permanent laws.‡ But none of these differences affect the problem of the classification of the *forms* of government, and, therefore, they are not admitted as considerations in the main problem.

We mention these things for two principal reasons. First, they show the exact bearing of the problem which Aristotle set himself to solve; secondly, the considerations just set forth will enable us to answer many of the criticisms levelled at Aristotle's classification, based chiefly on the apparent inadequacy of his division, as failing to include certain distinctive and admitted forms. Aristotle's division is not inadequate. Our modern governments consist simply of the forms given in the

* III. 14, 5.

† Aristotle was wise in ignoring these innumerable minor questions of heredity, election, the period of tenure, etc. Even now the terms in common use, based on such conceptions, are exceedingly ill-defined. For Aristotle, monarchy was a very simple conception; it meant the rule of one, and under that conception would be included presidentships, kingships, and all other forms and titles by which the chief ruler is at present designated. But how ill-defined are our modern conceptions in comparison with his! What, for instance, does modern society mean by a "king"? Is a king an hereditary monarch? If so, the king of the Poles being elective was not a king; neither is the "king of Siam," who is *appointed* by his predecessor in office, a king. And what is a President? If a transitory rule is a chief characteristic, then the President of the Chinese Republic was not a President, since Juan-Shi-Kai, whilst still President, carried legislation securing him as President of the Chinese Republic for life, and also enabling him to appoint his successor.

‡ III 14, 3.

ancient classification but blended in varying degrees, and realised in certain special circumstances in each State. The *rule of one* occurs in the case of all presidencies and monarchies, with their varying prerogatives and powers; the *rule of the few*—the rich, or mighty, or wise, or learned—is operative in most of our Upper Legislative Houses, in some of which one or other of the qualities of aristocratic rule receive recognition, in others, quite different qualities. In the Italian Senate, for instance, some of the members are appointed for their learning or their philanthropy or other kinds of merit, whereas in England, to say the least of it, these constitute no formal title of admission to the Second Chamber. Finally, the *rule of the many* (not excluding of course the rule of all) will be found realised in all direct democracies, in the representatives of the people in every First Chamber, as well as in the direct power sometimes conferred on the people themselves in regard to altering the constitution.*

UNITARY AND FEDERAL STATES

States are divided primarily and fundamentally according to the form of government which they severally employ. Every State is constituted of either a monarchy, an aristocracy, or a democracy, or of some combination of the three. But this fundamental division being made, and each State being provided with one or other of the constitutions mentioned, it is possible to discover other divisions also, based on considerations less fundamental, though not less interesting and important, than that just given, the chief of these being the relation of the parts to the whole, or the degree of independence accorded to the parts in reference to the whole.

States have been divided on this basis by modern writers into unitary and federal States. In the former there is only one central sovereign government, one

* *e.g.* in America.

legislature and one executive, supreme over all the rest of the community. Examples of this form are France, England, Italy, Russia. In all these there is only one central *sovereign* power, exercising the fullness of legislative and executive authority, and *controlling all* the public affairs of the nation. In England king, lords, and commons are supreme over all. In France parliament, president, and national assembly * are supreme. In neither country are there any competing sovereign or independent parliaments each with its own sphere of legislative authority, or competing executives each with its own sphere of administration. In each there is only one *supreme* legislative body, and one *supreme* executive, to whom is given the fullness of sovereign power extending to all affairs of State and to all the subjects of the State. In France and England, indeed, a system of local government obtains, but the various local bodies are all subject to the central sovereign body. In the British Empire there are parliaments other than that at London; for instance, there are the parliaments of Canada and Australia; but these are completely subject to the central parliament. This, then, is the essential characteristic of the unitary State that it is governed by one central authority, one person, body, or group of bodies, exercising between them *full sovereignty* over the whole people and over every sphere of public affairs.

A federal State may be defined as a single completely sovereign State, of which the parts also are States in an incomplete sense, enjoying partial sovereignty. The parts of a federal State are States because they have their own parliaments, executives, and judicatures possessed of sovereign powers (*i.e.* original powers not derived from the central or federal parliament) in regard

* This is a special constitutional body, distinct even from parliament; whilst parliament consists of the two Houses acting separately, the National Assembly consists of the two Houses sitting and acting together. The latter has two functions—the election of the president and the changing of the constitution.

to certain matters ; but they are States in an incomplete sense only, because their sovereignty does not extend to every department and relation of State, but to some only, generally the internal affairs of the State. In America, for instance, there is only one completely sovereign State—the United States. There is a central parliament and executive with original jurisdiction (extending to all the people) over certain matters, *e.g.* foreign policy, war, post-office, duties, etc. Then there are the State parliaments and executives with original sovereign jurisdiction over all or *practically* all internal affairs. Their authority, unlike the parliaments of Australia or Canada, is equal to that of the central body, is not derived from the central authority, but is given to them originally in the constitution, just like the authority of the federal parliament and government. Between them these several political corporations, the State parliaments and governments and the federal parliament and government, constitute not several States but one, for it is only between them * that sovereignty is completely exercised, and that the necessary machinery is finally provided for controlling the whole people in all the departments of the public life. Other prominent examples of the Federal State are found in the German Empire and the Swiss Republic.

Confederations and alliances.

The federal State (Bundesstaat) requires to be carefully distinguished from what is known as a "confederation of States" or "confederation" simply (Staatenbund), as this latter must also be distinguished from the mere "alliance."

A *confederation* is a union, effected *by public law*, of many *completely sovereign States* in a single corporate whole, the component States in the confederation retaining each its sovereign authority, complete and unimpaired, and the whole confederation being *represented by some public organ*

* And, with them, the people entrusted with the sacred duty of changing the constitution—a duty, however, in the discharge of which the several governments also have a share.

or institution bringing the confederation into public relation with the parts and with the rest of the political world. Examples of such confederations are the Swiss Confederation of 1815–1848 and the Germanic Confederation of 1815–1866. In both cases the component States maintained their *complete* sovereignty. The confederation as such exercised none of the powers proper of a State. The Diet, which was the organ representing the confederation, was a Congress of delegates only (from the component States) not a Legislative Assembly.* It, therefore, did not and could not exercise any of the ordinary functions of sovereignty, and any functions that it might perform were simply delegated to it by the component States. Each State was, therefore, fully sovereign. No doubt, in the Germanic confederation, the component States agreed not to make war separately on other nations. But such an agreement constituted no diminution of the native sovereignty of those States, any more than a similar agreement made between any two modern completely sovereign powers. The three characteristics, therefore, of the confederation were: first, a plurality of completely sovereign States, each part of the confederation remaining completely sovereign; secondly, the fact that the confederation was of public law, and capable of entering into public political relations with other States; and thirdly, the confederation was provided with an organ (in each of the cases cited—a Diet) wherewith to express itself and whereby it was brought into juridical relations with the component States as well as with all the other sovereign powers.

The distinction between a confederation of States (Staatenbund) and an *alliance* will now be readily understood. An alliance is a union of completely sovereign States, effected, not by public law, but by private agreement, in which no public organ is provided for representing the union, and which, being dependent on private agreement only, and being unrepresented by any special organ, is incapable of entering into public political relations of any kind with other States. A well-known instance is the Triple Alliance (recently † repudiated by one of the parties) of Germany, Austria, Italy.‡

* Morse Stephens, "Revolutionary Europe," p. 345.

† May, 1915.

‡ For completeness' sake we shall briefly define certain other analogous terms much used in works on international law. An *incorporate union* of States occurs when the component parts are so absorbed as to lose all sovereignty, whether over internal or external

Constitutions

The form of the State is determined by its constitution. It will be necessary, therefore, to give the reader some general idea of the nature of a constitution and its various kinds.

Definition.

Aristotle gives the following simple definition :* a constitution is " the organisation of the supreme power in a State, determining how it is to be divided, what is to be the governing body, and what the (function or) end of the community " ; or again, " a constitution is the arrangement of magistracies in a State, particularly the highest of all." † From these we may deduce the following working definition of a constitution—it is that body of fundamental laws ‡ which determines the form

affairs—the component parts being simply taken out of international law, *e.g.* the union of Scotland and of Ireland with Great Britain. These incorporate unions are simple unitary States. A *personal union*, which, as Westlake (" International Law," I. 32) observes, presents only the semblance of a union, occurs when the same monarch happens to preside over two completely distinct States, *e.g.* the union of England and Hanover from 1714 to 1837. *A real union* occurs when the sovereign governments of two distinct States though remaining distinct in other relations, amalgamate at least for the conduct of foreign relations, and in this sphere are subject to a common government. Such is the union of Austria and Hungary. It is not always easy to distinguish a real union from a federal State. There is, however, this distinction between the federal State of America and the Austro-Hungarian Empire, that whereas in America the governments of the parts do not amalgamate to conduct foreign affairs (these governments have simply nothing to do with foreign affairs) in Austro-Hungary the two governments send representatives (the delegations) to constitute a separate and independent legislature, to which is attached the foreign ministry.

* " Politics," IV. 1, 10, *πολιτεία μὲν γάρ ἐστι τάξις ταῖς πόλεσιν ἡ περὶ τὰς ἀρχάς, τίνα τρόπον νενέμηνται, καὶ τί τὸ κύριον τῆς πολιτείας καὶ τί τὸ τέλος ἑκάστοις τῆς κοινωνίας ἐστίν.*

† III. 6.

‡ In " Politics," IV. 1, 10. Aristotle distinguishes between the constitution and the laws ; but by the latter term is meant " ordinary law " as opposed to " constitutional law." The constitution determines what the *State is to be*, i.e. what its structure is, and who is to have or to share the sovereign power ; ordinary laws determine what the *subjects are to do*. The second set of laws presupposes the first.

and structure of the State, the distribution of the *sovereign* authority within it, the bearer or bearers in general terms of that authority, and the end to which the State is to be directed. Thus a constitution is supposed to determine (in general—not in particular) the supreme head of the legislative department, of the executive, and of the judiciary (whether, *e.g.* the executive will be under a monarch or a president); also the relations between the three, and the several powers of each. Most constitutions also give some idea of the general end aimed at by the State, *e.g.* "the Confederation (of Switzlerand) has as its end to secure the independence of the fatherland against outside aggression, to maintain tranquillity and order within, to protect the liberties and rights of the confederates and to promote their common prosperity." In general it may be said that the Constitution determines the structure of the State and the chief end at which it aims. Sometimes, no doubt, laws find their way into the constitution that have nothing whatsoever to do with the structure or the chief end of the State, *e.g.* the shameless article 25[2] of the Swiss Constitution forbidding the killing of animals by bleeding. Such laws as these have no right to a place in the constitution; they are ordinary, not constitutional laws, and their insertion in the constitution is due, as a rule, to some circumstance or exigency of party strife.

The various kinds of constitution.

Constitutions are divided into (1) written and unwritten; (2) flexible and rigid constitutions.

(1) A *written* constitution is a formal written instrument in which the structure of the State, its end, and the distribution of the sovereign power are expressly and completely described, *e.g.* the constitution of America, Switzerland, Germany. We say "expressly and completely," because even where there is no written con-

stitution, as in England, some of the constitutional laws are written, that is, in the Statute Book, *e.g.* the law destroying the absolute veto of the House of Lords in England. But in England there is no formal instrument purporting to set out in *express* and *complete form* the fundamental laws of the constitution; on the contrary, the most important of these laws are altogether unwritten, and exist only as living principles of the constitution, being presupposed in every relation and act of the State. An *unwritten* constitution, then, is one which depends on no formal written instrument purporting to determine in complete form the structure and end of the State.

(2) A *flexible* constitution is one which can be changed by the ordinary legislative organ, *i.e.* that organ which is charged with the introduction and repealing of ordinary laws; for instance, the constitution of England is flexible, since it can be changed by king and parliament, like any ordinary law. A *rigid* constitution is one that cannot be changed by the ordinary legislative organ, *i.e.* the body charged with the enacting of ordinary laws, but only by some special legislative organ determined by the constitution itself. The constitution of the United States is rigid; it is changed not by Congress and President, to whom the constitution entrusts the enacting of ordinary laws, but by the people in convention or the State legislatures,* neither of which have any control over ordinary federal legislation.

The reason why, in most countries, power to alter the constitution is withheld from the ordinary legislative body is two-fold, first, in order to emphasise the very special character, the sacredness, of constitutional as compared with ordinary laws, and second, in order to place difficulties in the way of the too easy alteration of the former. Special difficulties are no doubt raised and special precautions taken in nearly every class of con-

* The detailed requirements are described in the American constitution, Art. V. *

stitution, even flexible ones, in the case of proposed changes in the constitution. For instance, in Belgium, Holland and Greece it is provided that after a change in the constitution has been proposed, and before the measure is finally passed, a dissolution of Parliament must occur.* In Germany any fourteen members of the Bundesrat or Upper House can veto a proposed change in the constitution.† But these difficulties do not of themselves render the constitution rigid in the technical sense of the term. A constitution is rigid only where a special constitutional body is given power over the constitution, and thus a constitution may be flexible even though, as a matter of fact, in some cases the difficulties placed in the way of alterations may be more effective than the obstacles provided for the rigid constitutions. Thus, for instance, the French constitution is rigid because it can be changed, not by parliament, which consists of the two Houses acting separately, but by a body specially provided for in the constitution, viz. the National Assembly, consisting of the two Houses acting in joint session.‡ Yet it can hardly be said that the difficulties raised by this provision are exceptionally great.

The Simple Forms of Government Separately Considered

MONARCHY

Aristotle distinguishes between an absolute and a limited monarchy. An *absolute* or despotic monarchy is one in which all the powers of government are placed *unreservedly* in the hands of one individual. Such a monarchy may be hereditary or elective, permanent or

* Also in Holland a two-thirds majority of the new parliament in favour of the measure is required.

† Since Prussia has more than this number of representatives in the Bundesrat it practically has a veto on all such measures.

‡ This body is also given another important function, viz. the election of the President.

temporary. A *limited* monarchy is one in which only a limited amount of power is placed in the hands of the ruling monarch. His powers may be limited in either of two ways, either by reserving certain powers in other hands than that of the monarch, such as the power of life and death, or by enacting certain laws under which the rule of the monarch is to be exercised. In both cases it is supposed that a power of law-making rests with the people; for which reason we may regard the second kind of monarchy, *i.e.* limited monarchy, as equivalent to what we now speak of as a constitutional monarchy,* the difference being that whereas in Aristotle's conception, that of the limited monarchy, it is the limitations set to the power of the monarch which are chiefly emphasised, our modern conception of constitutional monarchy emphasises rather the right of the people to a share in the sovereign power either directly or through their representatives. Limited monarchy is thus, in strictness, a mixed form, and not one of the simple original forms of government, so that it will not be necessary to take account of it in our present computation of the merits and demerits of the three simple forms, which we now go on to compare.

In all three forms there are excellences and defects which it will be necessary to set forth, however briefly, here, since it is principally through a computation of these excellences and defects that the problem of the best practical form of State is to be solved.

The excellences which characterise the system of absolute monarchy are obvious; unity of government, decisiveness, disinterestedness (for though an absolute monarch may appropriate some of the wealth of the country to enrich himself, still, as to the rest, which will constitute by far the greater share, his judgment and his decisions are likely to be fair and just), freedom

* According to Aristotle, limited or constitutional monarchy is not to be regarded as a simple and original, but as a mixed form of State. Royalty or kingship proper, therefore, means absolute kingship.

to vary administration in accordance with the requirements of circumstances (fixed laws being a check on freedom and preventing one from governing as the circumstances require). These, as we said, are obvious advantages. But they are all quite theoretical in character, and rest on assumptions that hardly correspond with the facts or the probabilities of life. In a despotic monarchy unity and decision may be wanting just as in the purest democracy, since the judgments of a despotic monarch may be as vacillating as those of the crowd and more changeable than those of a small aristocracy. He may even rule in the interest of a particular class just as an aristocracy or a democracy may. Above all things the system of despotic monarchy is opposed to freedom, in the sense of the power of *self*-government, and it offers no guarantee that government will really be in the interest of the whole people, since a single individual can hardly be a competent judge of what the various sections of the people require.

We should like, however, to make some reference here to one excellence in the system of despotic monarchy which seems to have been forgotten by many advocates of democratic rule, in spite of the fact that it was largely through this particular excellence that the beginnings of that great progressive movement, which ended in the triumph of democracy over the other two systems, were rendered possible. We refer to the necessity of absolute monarchy for breaking down the power of the nobles, whose hold upon government formed the chief instrument whereby the masses continued to be enslaved in the mediaeval period. It was the absolute monarch that helped very largely to break the power of the feudal lords in the mediaeval period. In Russia the people on one occasion insisted on the concession of absolute power to a single individual, the Czarina Anne, as a means for breaking the power of the nobles. It was also in some such capacity as this that the Tyrannis first appeared amongst the ancient Greeks. " According

to Aristotle," writes Sidgwick,* " and historians generally, the appearance of Tyrannis is to be regarded as the first form of the democratic movement against the ruling nobles; the earlier Tyrannis is developed out of the demagogue, his power is founded on the need felt by the people—as yet unripe for real democracy—of a leader and protector against her traditional oppressors." Also, " in the leading case of France, the process may be gradually traced through various interruptions and vicissitudes from the accession of the House of Capet to an almost nominal throne, on to the famous moment when Louis XIV is represented as uttering the *L'État c'est moi*; and historians all recognise the value to the monarchy of the support of the *tiers état* by which Denmark, in A.D. 1660, passed suddenly to absolute monarchy from a form of government which was very near to oligarchy. The alliance of king and commons against the governing nobles is as palpable and conspicuous as it is at the beginning of any of the Greek tyrannies." An absolute monarchy, therefore, is not without its excellences. It was often necessary in ancient times, where what was chiefly required in government were the two qualities of unity and firmness, the populace not being sufficiently developed or organised to give promise of either. It was also necessary both then and at a later period as the bulwark of the popular liberties against encroachment on the part of the nobles. But a comparison of the defects and excellences we have mentioned will show that the rule of the absolute monarch is out of place in the modern State, except in abnormal circumstances,† or under conditions approaching those usually obtaining in the case of undeveloped communities.

* " Development of European Polity," p. 188.

† *e.g.* on occasion of war. In America in war-time the President becomes practically a dictator.

ARISTOCRACY

The advantages of aristocracy when examined from the point of view of theory alone are also obvious. As compared with absolute kingship, aristocracy represents the rule of a number of men as opposed to one man, and it is to be expected that the combined wisdom of a number of men acting in concert will be greater than that of a single individual. As compared with democracy, aristocracy represents the rule of enlightenment over unenlightenment, the firm judgment of a compact and energetic group of competent men over the distraction and incompetence of a disorganised crowd, administration by a group of men with a stake in the land, and with important interests to protect, over administration by irresponsibles who have nothing to lose or to jeopardise by their mistakes, and nothing, therefore, to render them cautious where caution is needed, or venturesome where daring is required.

But all these excellences are more than outbalanced by the corresponding defects. Like absolute kingship, a pure aristocracy withholds from the people all the delights of freedom in its highest sense, *i.e.* self-government. Also government by the few only is bound to deteriorate into government *in the interest* of the few or in the interest of one particular class in the State. Indeed, in the light of this particular danger, aristocracy is to be regarded as far inferior to the system of absolute kingship.* It is quite inconceivable that an absolute monarch could for very long administer the country in his own interest alone; but government by an aristocracy in the interest of their own class is easily conceivable. What is more, a sovereign aristocracy is, as a rule, an absolute aristocracy in the sense that the laws themselves have very little sacredness in their eyes, their own interest being paramount, and, therefore, they will flout and ignore laws, even of their own making, when circumstances turn these laws to their disfavour. Our argument

assumes, of course, that an untramelled aristocracy tends naturally to degenerate into an oligarchy ruling in its own interest alone; but this assumption we have no difficulty in making. A sovereign aristocracy has both the temptation and the opportunity to rule in its own interest chiefly, much more so than an absolute monarch, and temptation and opportunity are a combination not easily resisted by ordinary mortals.*

But though all this is true of aristocracy, pure and simple, an aristocracy may most usefully be entrusted with a portion of the sovereign power in a State for the most part democratic in character, and in this capacity may be made to supply the element of permanence and stability so evidently wanting in the purely democratic State.

DEMOCRACY

Democracy is of two kinds, *direct* and *indirect*. In a direct democracy the people are the bearers of sovereign power, which power they themselves immediately exercise at least in the domain of legislation. In an indirect democracy the sovereign power is exercised through representatives chosen by the people. Direct democracy was the form of government that obtained in ancient times at Athens † and that still obtains among some of the smaller cantons of Switzerland. Indirect democracy is exemplified in countries like America and France.‡

* See Aristotle's powerful criticism of the evils of a pure aristocracy. "Politics," IV. 11, 5.

† See the interesting description given in the "Acharnians" of the Athenian Assembly. In his "Growth of the English Constitution," Prof. Freeman gives a fascinating account of some of the popular Assemblies of Switzerland.

‡ It is necessary to point out that in an indirect democracy the representatives of the people are not mere *delegates*. A delegate acts not from himself but as the instrument of another. He has no personal discretion, and for validity his acts must accord with the intention of his principal. Parliamentary representatives, on the other hand, can pass valid laws even though they are not approved by the people. As an example of legislators who are delegates merely we may quote the members of the Upper House in Germany. These simply record the wishes of the State governments.

It will not be necessary to consider the merits and demerits of *direct* democracy—a form of government which is obviously suitable only for very small States and for social and industrial conditions of a very simple type. It would be wholly unworkable in a country of such a population and of such a complex system as France or England, or even Switzerland taken as a whole.

But though the whole function of legislation could not in any modern State be allowed to devolve directly on the people, nevertheless a part of that function may often usefully be entrusted to the people, particularly such part of it as does not call for constant exercise, and is of sufficient importance to awaken the popular interest when the need for exercising it does occur. As a rule, it is in connection with proposed changes in the constitution that the people are given this right of direct legislation, since such questions only rarely come up for discussion: but when they do occur their importance is at once recognised and appreciated by all. In America, for instance, a change in the federal constitution is enacted either by the consent of the legislatures in three-fourths of the States, or by conventions of the people in three-fourths of the States.* The people are thus given a good deal of direct power over the constitution.

SWITZERLAND—THE REFERENDUM AND INITIATIVE

In the Federation of Switzerland the direct legislative powers of the people are very wide. Let us first speak of constitutional laws. Any proposed change in the con-

* There are two methods for *proposing* such changes. The federal Congress may itself by a two-thirds vote in each House prepare and propose amendments; or the legislatures of two-thirds of the States may call on Congress to summon a constitutive convention of all the people, which convention will then draft and submit amendments. It is Congress that decides the mode of election and constitution of this convention, and it is Congress that decides whether a proposed amendment will be submitted for final enactment to conventions in the various States, or to the legislatures of the States.

stitution *has* to be submitted to the people by *referendum*, and unless accepted, not only by a majority of the people taken as a whole, but also by a majority of the cantons, it cannot become law. In other words, in Switzerland the referendum in regard to proposed changes in the constitution is obligatory, not optional. But the people of Switzerland also enjoy another power in regard to legislation dealing with the constitution. Not only must all measures in matters regarding the constitution be referred to them for their acceptance before such measures can pass into law, but the people enjoy also a right of *initiative* in regard to these measures. Any 50,000 voters in Switzerland could demand a *totally new* constitution, *i.e.* they could call on Parliament to ask the people of Switzerland whether a new constitution is required, and if the people answer "yes" a new constitution would have to be drawn up in Parliament * and submitted to the people. Or if there is question of only a *partial* change in the constitution any 50,000 voters might themselves, if they cared to do so, draw up a measure in its final form embodying the proposed change, and Parliament would have to submit this measure to the people.†

Then, secondly, the people have power in regard to *ordinary* laws, their right of referendum ‡ extending not only to constitutional but to ordinary laws as well. But whereas the referendum is *obligatory* in regard to all proposed changes in the constitution, so that no change can be made until the proposed change is submitted to and accepted by the people, it is *optional* in regard to ordinary legislation. Parliament in Switzerland may pass an ordinary measure, just as in other countries, without appeal to the people. Nevertheless, if the people so desire, they can insist on any law passed in Parliament being submitted to them for ratification before it becomes operative,§ and if it fails to meet with their approval, the law, even though passed in Parliament, falls to the ground. The request to have an

* After a special general election.

† They might, however, content themselves with proposing a change in general terms, and Parliament, having found that a majority of the people favoured the change, would then proceed to draw up a definite measure, which measure would finally be submitted to the people.

‡ Strange to say, the people have no right of *initiative* in regard to *ordinary* federal legislation. One would have thought that the constitution, much more than ordinary legislation, required to be protected from the fickleness and passion of the multitude in Switzerland just as in other places.

§ *i.e.* 90 days after it is passed.

ordinary law submitted to the people can be made either by eight cantons or by any 30,000 voters.*

It is this right of referendum in regard to *ordinary* legislation that is the most distinctive mark of the Swiss system.

The question arises whether the referendum is really a valuable adjunct to the political machinery of any normal country? In *favour* of the referendum it is argued by Mr. Dicey (*Fortnightly Review*, 1910) that "the referendum makes it possible in a way which is now impossible in England to get on any matter of real importance, a clear and distinct expression of the will of the nation." At an election a multitude of opposing issues are put before the people, and it is impossible to tell on which, if any, the nation has returned a particular party to power. Again, it is argued that the referendum affords the only hope of any real check ever being placed to the growth of the party system. *On the other side* it is pointed out by Maine ("Popular Government") that a referendum would stop a great deal of useful legislation, since most people would find it easier to discover something unfavourable in a measure than something favourable. If it depended on the people, for instance, machinery would never have been introduced into England and allowed to supplant ordinary labour as it has done. Appeal is also made to the inability of the people to understand the technicalities of a measure submitted to it, and particularly its detailed bearings; also to their apathy in regard to most measures, as witness the smallness of the vote recorded in many of the cantons in Switzerland on measures submitted for their approval, in comparison with the large vote cast for the elections.† Finally, it is claimed, that referendum

* But an ordinary law when submitted requires only to meet with the approval of the majority of the whole Swiss people; a constitutional law, on the other hand, must commend itself to a majority both of the people and of the cantons.

† See Lowell, "Government and Parties in Continental Europe," II. 261.

lowers the sense of responsibility of the people's representatives. Representatives will often in Switzerland vote for a measure, hoping that it might later be rejected by the people.

With these arguments available on either side, the only conclusion possible is that, where the referendum does not exist, it ought not to be introduced without a continuous and imperative demand on the part of the people. Where, however, the referendum has grown up with the constitution and is not grossly misused it ought to be continued.

Indirect democracy is now the accepted system in all countries adopting the democratic form of government, and it is not necessary to distinguish its merits and defects. Besides, even the consideration of any one of the questions suggested by this form of government, *e.g.* the question of the extent of the franchise * or of the rights of minorities to representation † would lead us too far afield in a work like the present. But it is obviously necessary to say something on the conception of democratic government taken by itself, as opposed to discussion on either of its two types.

Democracy versus *the other forms.*

Abstracting, then, from the distinction of direct and indirect democracy, and confining our attention to the rule of "the many" or of "all," as contrasted with the rule of "the few" or of "one," we may here attempt to sum up very briefly the advantages and disadvantages of pure unmixed democracy (*i.e.* a democracy in which the sovereign power lies wholly in the hands of the

* See John Stuart Mill's "Representative Government."

† The system devised for giving representation to minorities is known as Proportional Representation. It has various forms. They are fully described in J. H. Humphrey's work on Proportional Representation, and J. Meredith's work on the same subject.

people) over the other two systems of monarchy or aristocracy.*

The *first* obvious advantage is that, under the system of pure democracy, the people are *fully free.* The word freedom is understood in two senses ; first, there is what John Oliver Hobbes describes as the " desolate freedom of the wild ass," meaning the power to do what one pleases, unrestrained by any requirements of law, or moral duty, or social obligation, or dictate of human reason of any kind. Such freedom is valueless to creatures of reason, and scarcely even merits the name of freedom ; for without law there can be no guarantee of protection, and without a guarantee of protection no man is his own master—his life, his possessions, and his rights being open to invasion at any moment. But freedom is understood in another and better sense, the sense in which it possesses a value for men, viz. the power and right of self-government or self-control according to law and reason, and it is in this sense that we set a value upon freedom in the present discussion. In a democracy the people direct and govern themselves according to laws which they themselves enact, and, therefore, in a democracy the delights and blessings of freedom are most fully felt. We do not, of course, maintain that freedom is impossible under the other two systems ; what we maintain is, as we have just explained, that under the democratic system the people are fully free, that not only are they guaranteed the exercise of their rights but these rights are guaranteed according to laws of their own making. Their right, therefore, is the right of complete self-direction and self-control, and self-direction is the chief element in freedom.†

On the other hand, however, it is to be admitted that

* These advantages and disadvantages it will not be necessary to set out separately. The disadvantages are here given in the form of modifications to the several arguments based on the advantages of democracy.

† *Liberum,* says St. Thomas, *est causa sui.*

the value of this right of self-control is itself largely dependent on the value of the laws under which, and according to which, one's liberty is exercised and directed; and, therefore, since, as we shall later prove, democracy, though a necessary element of the best constitution, is not itself the best, it follows that the laws of a pure democracy are not likely to be the best, and that the freedom afforded by democracy will itself be a maximum, not under the system of democracy pure and simple, but under a mixed rule, in which the democracy, though occupying an important and controlling position, is itself modified and diluted by admixture with other systems.

A *second* obvious advantage lies in the fact that government by all will probably be in the interest of all, just as government by one or the few tends to be in the interest of one or the few, and, as we have already seen, it is the interest of all that constitutes the chief and proper object of government. But this argument has to be modified by the admission that government is never exercised in a democracy by all, but by a majority, or by parties representing the majority, and often it is not exercised in the interest of all but of the majority only. Even, however, in this modified form, our argument can be made to afford us valuable conclusions. One is that the interests of the people at large, whether the people are divided into parties or not, although not represented according to absolute justice, will more properly be represented in a democracy than in any other of the simple forms of government. Also, though the system of majority rule may favour at one time a certain section of the community only, at another time it will favour another and opposing section, and in this way some kind of rough justice will in the end have been done to all the parties. It will be said that the interests represented by the richer classes cannot be properly defended in a pure democracy. We answer, first, that it is possible to exaggerate the importance of these interests as opposed

to the interests of the people at large. The special interests of the rich consist for the most part of such things as money, lands, commerce, industry: and these bear no proportion to the interests of the people at large, which consist of the lives and liberties of the people themselves. We admit, however, that in a pure democracy the interests of the rich may not receive sufficient care, and for that, amongst other reasons, we are ourselves disposed to favour a mixed rather than a pure democracy. What, however, we are here considering are the relative merits of the simpler forms of government, of pure democracy as opposed to government by the few or by one, and in that connection our claim is that political justice is altogether on the side of the first system as against the other two, and also that in determining the degree of prominence that should be accorded to these different interests in the best State, to the populace should be given such a degree of ultimate controlling-power as corresponds with the greater interests represented by the people at large, as compared with the interests of the few "rich and noble."

A *third* advantage claimed for democracy consists in the fact that the public interest, which is the proper object of government, is more likely to be understood by the whole community than by any section of it, and particularly by a privileged section like an aristocracy or a monarch. And this is true in great measure but not wholly. For, in the first place, the vast majority of the people are ignorant and uneducated, and inclined rather to judge of immediate and evident or superficial consequences than of the more remote and more permanent effects.* Also they very easily become the

* See interesting argument in Aristotle ("Politics," IV. 13), describing the devices whereby the oligarchies of old deceived the people, for instance, fining only the rich for non-attendance at the Assembly, so that the poor (foolishly regarding the law as conferring a privilege on themselves) might stay away, leaving the better classes to dominate the Assembly.

victims of designing demagogues, interested for the most part not in the peoples' welfare but in their own. Balancing these two sets of considerations, the conclusion would seem to be that, though the populace are liable to many errors, they have nevertheless a strong and very living consciousness at least of the greater and broader interests and issues, and it is on a right judgment as to the broader interests and issues that successful government depends, rather than on a correct estimate of effects in detail. The conclusion would seem to be that at least the remote control of government may safely be left to the people, such a control as requires command of the broader issues, the detailed work of government being left in the hands of others, who yet should be in some degree responsible to the people.

A *fourth* advantage claimed for democracy consists in the immunity which democracy affords against revolution, it being impossible that the people should rebel against themselves or be dissatisfied with laws of their own making. On the other hand, it is argued that, even under a democracy, one faction may rebel against another, and that a strong minority may successfully resist the majority, and that, so, a democratic State is not immune from rebellion or continued dissatisfaction any more than an aristocracy or a monarchy. We believe, however, that in these respects democracy is at least *comparatively* immune from the danger of rebellion. The various opposing issues having been fought out at the polls, it is not likely that they will again be combated for in the field. But whether they may or may not, it is certain that, for stability of government, confidence on the part of the people is absolutely required, and that such confidence can be secured in one way only, viz. by granting to the people a large and overwhelming degree of control over their own affairs.

THE BEST STATE

The two preceding paragraphs can leave no doubt in the mind of the reader as to our view of the question so keenly discussed by students of Politics from the most ancient times—the question of the best State. We suppose that, judged in the abstract and absolutely, the most efficient rule of all would be that of a single individual,* perfect in knowledge, in interests, in capacity for work, and fully equipped in everything that goes to make up the special excellence of a good ruler. Under such a rule integrity and unity of purpose would combine with complete efficiency in the selecting of the means, to produce the maximum of public prosperity and the most enduring peace. But perfect men in this sense do not exist in the ordinary human State, and, therefore, such a rule is not to be regarded as a practicable or possible system of government for man as he really is.

But the problem of the best kind of government may be raised in practical form in either of the two following senses: first, taking the circumstances of each State into account, what is the best form of government for that State? secondly, normally speaking and comparing one state with another, what is the form of government that realises the essential ends of the State in the fullest and highest way all round, or that is subject to the fewest and least important defects? To the first question no general answer can be given, except, perhaps, the not very enlightening answer that the best form is the form that *works* in each case, the form that has proved itself both enduring and progressive, that has grown under the influence of the special needs of the people, and been gradually shaped to meet those needs. In the first setting up of a State it would be

* Mill, in his work on Representative Government, maintains that the system of Representative Government is more perfect than government even by the most perfect human being, on account of the public political sense developed under the former system. Government by any individual, however perfect, must lead, he tells us, to "inactivity and decay."

very difficult to anticipate future possibilities, and to declare that such and such a form is or is not suitable to, or best for, this people's requirements. Indeed, whatever form is finally set up, is sure to be found wanting and to require modification in many respects, even by the admixture of other and opposed forms. Above all things, it would be rash to attempt to judge of the best form for a particular people by a consideration of the special character of that people, it being no easy thing to formulate the character of a whole people, and their character being itself to a large extent a result of the particular kind of government to which they have been subject. Aristotle made the attempt to assign the forms of government most suited to each kind of character,* but his attempt can hardly be regarded as helpful in any way to the framers of constitutions. To the first of the two questions mentioned, therefore, it is hardly possible to return any other answer than that which we have given, viz. that, in particular circumstances, that form of government will be most suitable which has been found to work, that is, which has proved to be effective and enduring, and to a certain degree progressive also, in those circumstances.

Our second question, however, admits of a completer and more definite answer. Put briefly, the question is this—of all the standard forms of government, which is the form that seems to fulfil the functions of government best, so that, *under average circumstances, and assuming that the character and history of the people favour all forms equally*, it could be predicted of it that it will be most promising in good results? That a strong democratic element will be present in this best constitution is certain from what we have already said. It will be a democracy in at least the sense that the legislature will be appointed by the whole people, and the control of finance will be in their hands. There will also be an aristocratic element, in the sense that the

* "Politics," III. 17, 4.

educated and wealthy and virtuous * (the social virtues being of more importance than the private in this connection) will be represented, either by special constitutional provision or by force of circumstances. Thus, even in America, the aristocracy (in this case an aristocracy of wealth and education) is practically assured full representation, at least in the Upper House, not indeed by the constitution itself, but by the special economic circumstances of the country and by the manner in which elections take place to the Upper House.† In England the aristocracy has its privileges from the constitution. But in every community there must be some means devised of giving to the greater monied, and other prominent, interests in the country a proper degree of representation. Any constitution in which the upper, and *even more particularly the great middle class*, are made completely subject, being allowed no share in the control of public affairs, the whole control being placed in the hands of the masses, is doomed to failure from the beginning. As participants in sovereignty, the masses are an enduring source of strength and a guarantee of progress; as sole rulers the masses are wanting in balance, in skill, in capacity for continuous effort, in devotion to duty, in faith to others and even to themselves. "If," says Maine,‡ "the mass of mankind were to make an attempt at re-dividing the common stock of good things, they would resemble not a number of claimants insisting on a fair division of the funds, but a mutinous crew feasting on a ship's provisions,

* Aristotle remarks, IV. 8, 3, that these three are generally found together. We would, however, make the reservation, "except where an aristocracy is given full and complete sovereignty, the populace being completely subject to them." In that case even the social virtues may not be accompaniments of riches and power. Aristotle adds (IV. 8, 9) that gentle birth is generally accompanied by wealth and virtue, "good birth being only ancient wealth and virtue."

† This guarantee was until recently more reliable than it is at present. Until recently, the State Legislatures appointed to the Senate; at present the people themselves appoint the representatives in the Senate.

‡ "Popular Government," p. 45

gorging themselves on the meat and intoxicating themselves with the liquors, but refusing to navigate the vessel to port." As subjects and as part-rulers it is the splendid virtues of the masses that come most into prominence ; as sole rulers their vices and shortcomings become effective competitors with their virtues, to the great detriment of the rest of the body politic and of themselves. But as we have said, and on this point we wish to lay most special emphasis, it is not to the masses or to the higher aristocracy, but to what we might call the lower aristocracy, the great middle classes, that we must chiefly look for the greater ruling qualities—for stability and sound judgment, for sensibility in the domain of justice, for that exact balance of the two ideals of conservatism and progress, which, from all ages, are the chief acknowledged conditions of successful rule. Aristotle's well-known commendation, "great is the good fortune of a State in which the (majority of the) citizens have a moderate and sufficient property," is as true of peoples and polities now as in his own far-distant age. It is through the great middle class (the class intermediate between the very wealthy and the poor), controlling as it does the chief departments of politics, that America has proved itself a sound and stable government, in spite of the facilities offered by the constitution for rapid and revolutionary changes. It is the great middle class in England that has successfully enabled England to survive all the disintegrating movements of the last hundred years, for, whilst aiding progress in every way, and identifying itself with the poor in the execution of every reasonable purpose, it has never hesitated to throw in its lot with the upper classes as against popular clamour and unrest, where revolution or insecurity seemed likely consequences of the popular programme.

There remains the question of the monarchical element. Should the State possess this element also, for the realisation of the best results ? Naturally, although

a presidency might fulfil the technical requirements of monarchy as defined by Aristotle, we shall in our present enquiry confine our attention to one kind of monarchy only, viz. hereditary monarchy, this being the only kind that can be contrasted with the conception of popular control. Our present enquiry, therefore, reduces itself to a comparison of what are properly spoken of as republics, like those of America and France, and constitutional monarchies, like those of England, Italy, and Belgium. But the sense of the question must not be misunderstood. The question is not whether America would be better off under a monarchical, or England under a republican government, but which of the two, the hereditary monarchy, or the elected temporary presidency, is the more suitable, generally speaking, for attaining *the proper end of government*, namely, the true and *permanent good* of the whole community, and which of them, in aiming at this end, is subject to the smaller number of defects. Here we have no difficulty in placing the balance of advantage with the hereditary monarchy.* The hereditary monarchy may bring in its train certain social evils which are absent in the presidency. With these social evils we have here nothing to do. What we do claim is that the constitutional monarchy is better fitted as an instrument for attaining to the proper ends of government than the presidential republic. And our reasons are the following :—

(1) Under the hereditary monarchy there are no breaks in government, such as occur on the occasion of an election to the presidential chair, and it is those breaks in government that are chiefly availed of by revolutionaries and malcontents for spreading discontent and inciting the mob to rebellion against the constitution.

(2) An hereditary monarchy offers a better and surer

* This, as we said, does not mean that America would be better off under a kingship. Such a form of government might not suit the circumstances of America.

guarantee of continuity of policy,* particularly in regard to foreign affairs, than government under a president; and without a tolerable degree of continuity of policy it is impossible for any State to enter into permanent agreements with other States or to enjoy their confidence.

(3) The rule of the hereditary monarch is likely to be more disinterested and impartial than that of the president. The monarch is above all party interest. By pursuing any particular course he can gain neither in position nor in influence, since by his birth he has all that is obtainable in the State. The monarch can, therefore, act, as no other ruler can, unmoved by any kind of current faction. Compare this mark of the monarchy in England with the temptations inseparable from the position of president in America. "In a country," writes Bryce,† "where there is no hereditary throne nor hereditary aristocracy an office raised far above all other offices offers too great a stimulus to ambition. This glittering prize always dangling before the eyes of prominent statesmen has a power stronger than any dignity under a European crown to allure them (as it allured Clay and Webster) from the path of straightforward consistency. One who aims at the presidency, and all prominent politicians do aim at it, has the strongest possible motives to avoid making enemies. Now a great statesman ought to be prepared to make enemies. It is one thing to try to be popular —an unpopular man will never be influential—it is another to seek popularity by courting every section of your party. This is the temptation of presidential aspirants." ‡

* We may be allowed to point out here that the guarantee of continuity in foreign policy given under the American system is far from ideal. It consists in the fact that in America all treaties have to be ratified by the Senate, and the Senate is a continuous body, only one third retiring at a time, every two years.

† "American Commonwealth."

‡ In America the fact that the President is re-eligible (in practice) only once, operates unfavourably on the President. During his first term of office he will, in order to secure re-election, pander to all the

(4) It is only through the rule of one who is above all party interest that the people can retain their hold on legislation. The majority in every legislature has its own proper interests and ambitions, interests often distinct from those of the people whom it represents. And, even where the two sets of interests are identical, the representatives of the people may mistake the mind of the people, or act without due consideration for their opinions. In either case it is only one who is above all party interest,* one who has nothing to gain or lose by the incidents of politics, who can be trusted to delay the proposed measure until the populace can have an opportunity of pronouncing upon it. Constitutional monarchy, therefore, is the best guarantee a people can have of their continued effective control over parliament, and, in a country like England, over government also. We may add also that in a constitutional monarchy the permanent interests of the people are likely to receive very special consideration over and above their passing superficial interests. In regard to both, the people may be mistaken, and where passion runs high the permanent interests are often little heeded. It is the monarch, who will still be present. bearing the brunt of office, when present deputies and ministers have passed away, who has most reason for seeing that the permanent and substantial interests of the people shall not be sacrificed to what is only of temporary and superficial importance, and, therefore, it is to the hereditary monarch that we may most confidently look for protection of the popular interests, not only against betrayal by the popular representatives, but against error and impetuosity on the part of the people themselves.

(5) The monarch enjoys a personal influence in politics not possible in the case of the president, a personal

active sections of his party, whilst during the second term he will run no risks to his reputation, even for the sake of the public, seeing that his own political death is assured and near.

* Presidents are always party men, being elected by party vote and dependent for re-election on the good-will of the stronger party.

influence which is mainly based upon the monarch's independence of parties and his superiority to party intrigue. It is for this reason that the intervention of the monarch in the various difficulties and *impasses* to which States are subject is so often attended with fortunate and far-reaching results. We may mention three instances. First, in the case of inter-party deadlock, the king is always a welcome mediator, and for the simple reason that he is above all party. Secondly, in the case of inter-cameral deadlock (and in England until recently such deadlock was possible as it is still possible in most other countries) the point at issue is generally a point of party interest, and again it is the king who will make the most successful mediator. Thirdly, even where international difficulties arise, the efforts of the monarch at reconciliation are more likely to prove successful than the efforts of minister or cabinet, not only on account of the prestige attaching to the position of the monarch and his personal relationships with other rulers, but also because he is supposed to be less keen upon immediate advantages and triumphs than cabinets are. In the relations of kings the human element and, therefore, the element of generosity and of compromise can always operate to some extent. As between cabinets and chancellories the human element simply does not exist. It is of cabinets and not so much of kings that Hobbes' description of sovereigns is true—that they are ever in a state of potential warfare, " their weapons pointing, and their eyes fixed on one another."* For this reason it is kings rather than presidents that can best exercise a modifying influence in the relations of States to one another.

* The social influences as well as the defects of monarchy will be found described in Bagehot's beautiful little work, " The English Constitution." A monarch's social influence, we maintain, should not be regarded as constituting, though it may indirectly contribute to, political efficiency. The mere fact that " the women, more than half of the human race, care more for a (royal) marriage, than for an (effective) ministry " could scarcely be cited as a reason for choosing a monarchy as form of government rather than a presidency.

APPENDIX

The Prerogative of the English Monarch in Regard to His Ministers

Before leaving the present subject it will be necessary to consider an objection which probably has already occurred to the reader, based on the apparently very limited powers of government enjoyed by the monarch in England. In the latter part of the preceding discussion we seemed to take it for granted that the powers of the English monarch are large and substantial. But are they really large and substantial? It is said that the monarch is without discretion; that by law he has to accept the judgment of his ministers, make that judgment his own, and rule in accordance with it; that for this reason he reigns but does not govern; that he is but as the hand on the face of the clock, the moving powers being all within; that his ministers are not his "ministers" but his "masters"; that his chief function is to give dignity and splendour to government, to elevate ministerial enactments into royal decrees, but not to govern, or to shape or frame these enactments or decrees. A cabinet it is said could not wear a crown. A mere corporation could not be anointed. The king wears a crown and is anointed. Whilst, therefore, the sacredness and splendour are all from the king, the dry work of government rests with what is especially called the king's government, that is, his ministers in the cabinet. "A crowned Republic," is how Tennyson describes the English monarchy. In England, says Seeley,* you have the "unbounded power of a ministerial Cabinet combined with the nominal maintenance of Royalty." And Sidgwick writes: † "West European Constitutional Monarchy is not, paradoxical as it may seem, essentially monarchical in the ordinary sense, *i.e.* a permanent hereditary king is not essential to it. In many cases—I do not say in all—if the functions performed by the hereditary monarch were transferred to a president elected for a term of years, the difference resulting would certainly not be so fundamental as to lead us to regard it as an essentially different form of government." From all these assertions and comparisons it will readily be understood how widespread and how firm is the opinion that the monarch in England has no important functions to perform, none that could not be

* "Introduction to Political Science," p. 229.
† "Development of European Polity," p. 395.

as well left to the cabinet and none that the cabinet is not now in reality performing, and it is in order to show how untrue and unfounded that view is that we have written this Appendix.

But before setting out our own opinion, we wish to point out to the reader who may not be quite clear on the exact point at issue and who may have been somewhat misled by the passage which we have quoted from Prof. Sidgwick, that our discussion here is not in the nature of a comparison between the position of the monarch in England and that of the president, say, of France or America, but is an enquiry into the relation of the monarch to his cabinet. The very same question that is here asked about the monarch of England, could be raised also in regard to the president of France. If the English monarch is left no functions to perform, neither is the president of France, for both act through their ministers and on the advice of ministers. We are not, therefore, enquiring about the respective merits of the English Monarchy and the French Presidency (that comparison was made in the preceding chapter) or whether it would make much difference if a president were substituted for the English king; our question is whether the monarch in England has specific functions to perform distinct from those of the cabinet, whether he has a specific and important part to play in the direction and government of the country,* and whether, therefore, it would make any real difference in England if the monarchy were abolished and the government of the country were placed exclusively in the hands of the cabinet.

Now, before proceeding to answer this question, certain distinctions have to be made. We must distinguish, *first*, the *moral* and the *legal* powers or functions of the monarch. By the moral power of the sovereign is meant the influence which he is able to exert on others, either because of his great position or his personal character and attractions, or generally because of the esteem with which he is regarded in private and public life. The legal powers of the monarch are those which are conferred on him by the public † law and can be enforced by the ordinary legal sanctions. Needless to say we have here nothing to do with the moral powers of the monarch; our discussion relates to his legal power and functions only.

* Of the social influence of the monarch we have here nothing to say.

† Not necessarily by special statute; some of these legal powers are conferred by the law of custom.

Secondly, we must distinguish between those legal powers which are *nominal* and *technical* only, and those which are *actual*, i.e. on the one hand, those powers which were once conferred by law, which have never been formally abrogated by any Act of Parliament, but which are supposed to have lapsed from want of use and as violating the present habit and spirit of the constitution: * and, on the other hand, those powers which neither have been abrogated nor have lapsed from want of use, and the exercise of which is still the strictly legal right of the monarch.†

Of course, in the present work we are dealing with the second class of powers only—the actual and real powers possessed by the monarch, not his lapsed powers; but a few words as regards the latter class of powers will not be out of place at this point. It is quite evident that there are powers nominally attaching to the monarchy which have never been formally abrogated by law, but the exercise of which is quite impossible, and which, if acted upon, would cause general surprise and resentment, and be repudiated by the body politic as opposed to the present habit and spirit of the constitution. For instance, the body politic would never tolerate a renewal of the monarch's ancient right to dismiss his ministry out of mere wantonness or because they displeased him, or in order to elevate a favourite to the rank of Prime Minister. But it is exceedingly difficult to know in certain cases what powers of the monarch have really lapsed from want of use and what remain in spite of being unused. A power might remain unused because there was no need for its exercise, but with the re-appearance of the need its renewed exercise might even be regarded by the nation not only as a right but as a duty. There are unused powers that, if exercised under normal circumstances, would shock the political sense of the people, but the exercise of which under abnormal circumstances, or in times of crisis, might be regarded even as imperative. There are

* As a rule it is only those powers which seem to oppose the habit and spirit of the working constitution that lapse from want of use. And it is to be remembered that the habit and spirit of the constitution may change very rapidly at certain periods. The renewed exercise of the king's right to attend the meetings of his cabinet would have been opposed to the altered relations that had sprung up between cabinet and king, even a few years after George I. had ceased to attend those meetings

† The reader may object to our speaking of the former class of powers as powers at all whether technical or not. But the distinction is at all events intelligible and it will be useful for the proper understanding of the remarks to follow.

powers long unused by the monarch which able lawyers and leaders of parties considered to have been irrevocably lost to him, but which, nevertheless, the monarch has, on certain occasions, been able to vindicate as still a part of his living prerogative, simply by acting on the supposition that they still remained. Many Unionist spokesmen maintained on the occasion of the abrogation of the Lord's veto that the monarch had lost the right of creating peers for the purpose of overcoming the obstinacy of the Lords; but the monarch effectively reduced them to silence by exercising the right, or rather by threatening to exercise it if the opposition of the Lords to the Veto Bill were found to continue. Such is the character of the constitution, depending, as it does, as much on precedent and custom as on formal statute, that one part of the prerogative may be abrogated by disuse, and another part may not; nor does it seem that there is any general rule by which the two classes of cases can be distinguished before a crisis arises except this—that a power, the renewed exercise of which would be a violation of the existing habit and spirit of the constitution is abrogated by disuse, but a power which is not obviously out of harmony with that habit and spirit, and which still subserves some useful constitutional purpose, even though in abnormal circumstances only, may still survive for a very long period after it has ceased to be actually exercised.*

These distinctions being made, we may briefly refer to the content of the king's actual prerogative. The monarch's prerogative may be examined under the following three headings:—

(1) The king's discretion in appointing the ministers of government.

(2) The power of the monarch in directing and influencing the work of legislation and administration.

(3) The right of the king to dismiss his ministers and to dissolve parliament.

(1) The king does not enjoy that absolute discretion in the appointment of his ministers that was his in 1688. At that time, and up to the year 1834, the king's right of choosing his ministers was unlimited and unconditioned. But in 1834 it was made clear to him that though he still retained the right of appointing his ministers, those ministers had to meet with the approval of parliament if government

* On this whole question we recommend the reader to consult Freeman, "Growth of the English Constitution," pp. 118–119; and Todd, "British Government in the Colonies," chapter 1

was to receive the support (*i.e.* the financial support) of parliament.* That also is the system which now obtains. Under present circumstances the monarch *normally* is left very little, if any, discretion in the choice of the Prime Minister. After an election the leader of the victorious party stands out before the whole country as the chosen of the people, and, therefore, almost automatically succeeds to the headship of His Majesty's government. But circumstances sometimes occur in which the monarch's right in this respect may become real and operative. "The leader of the (victorious) party," writes Anson,† "may not be obvious and paramount. Such was the case in 1859 when Queen Victoria, doubting if either Lord Palmerston or Lord John Russell would consent to serve under the other, asked Lord Granville to make an attempt. . . . So again in 1894 when Mr. Gladstone retired, the Queen did not consult him on the choice of a successor but invited Lord Rosebery to become Prime Minister." Another case in which the monarch's discretion may become real and operative arises when party lines, as Anson says, become "for a time indefinite. They were so after the break up of the Conservatives in 1846, and when the Coalition Government of Whigs and Peelites was formed by Lord Aberdeen in 1852." Also if, as now seems likely, the dual party should disappear in England, owing to the formation of a third party as numerous as either of the other two, the monarch's discretion in the choice of his minister may then become as settled and ordinary a part of his prerogative as the discretion now ordinarily exercised by the president of the French Republic.

(2) The king has a legal right to be consulted on all matters of legislation and government. In the sphere of legislation he may refuse his consent to a measure passed even by both Houses. Resistance to the will of Parliament may often be both inexpedient and dangerous, but the fact remains, that legally and formally, the consent of the monarch is required for every measure, and if the monarch should on any occasion prepare to run the gauntlet and to set his face against a measure passed by the two Houses,

* The support of parliament was, of course, necessary even before 1834. But before that year a minister was assured of receiving that support simply because he was minister. It was in 1834 that parliament first insisted that the policy of the minister should be *antecedently* pleasing to parliament before support could be ensured. See most interesting passage in Seeley, "Introduction to Political Science," pp. 284 and following.

† "Law of the Constitution," vol. II part 1, 39.

the government in that case will have either to withdraw its proposal or resign. It would, indeed, be foolish to underestimate the seriousness and importance of this great outstanding fact. Legal power is legal power, however careful and reserved one must be in the use of it. It is this power which gives to the monarch his *right* to be heard on all legislation. A monarch will not often oppose a measure likely to meet with the approval of the two Houses. He will, in practically all cases, accept the advice tendered by his ministers, but he has a right to endeavour to shape and modify that advice before it is finally tendered to him. A monarch cannot be treated by the minister as if consulting him were only a matter of form or a compliment to the monarch's distinguished position; the monarch has a *legal right* to be heard, a right based upon his power of veto, and it is this right which gives him his great weight of influence even in cases in which the actual exercise of the veto would be out of the question. But, as we have said, there are occasions where the king may oppose the advice tendered him and actually interpose his veto; but in that case he must be prepared to face the risks and the possibilities to be described in a succeeding paragraph.*

And what we have said of legislation is true also of administration. The monarch's right of resistance is a great reserve of power and has to be used most sparingly and with the utmost discretion. But, such as it is, it places him in a very strong position in his dealings with his ministers. The sovereign does not take independent action in regard either to home or foreign affairs, but he has a right to be heard in regard to both. In foreign policy particularly he is most careful to be consulted on every matter, and particularly to be informed in regard to all communications with foreign powers.†

(3) We have said that it is only in very extreme cases that the monarch would attempt finally and formally to reject the advice of his ministers. As these extreme cases are generally cases in which important matters of policy are involved, resistance on the part of the monarch may generally be regarded as involving the resignation of the ministry and the subsequent dissolution of parliament.‡ The king

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* p. 598.

† See Anson, II. I. 43.

‡ The king after the resignation of the ministry must find a new minister to intervene in dissolving parliament. He could not dissolve parliament from himself.

can even dismiss his ministers if they refuse to resign, and thus can force an appeal to the country.

The king cannot dismiss a ministry for any mere private end. He can dismiss it only on the supposition that the ministry does not enjoy the confidence of the House, or that the House in supporting the ministry does not represent the mind and feeling of the nation. The will of the people, it is, that must finally and in all cases prevail. Let the House represent the nation, and let the ministry enjoy the confidence of the House, and then the monarch's hands are tied. Let either link be wanting and then the monarch's prerogative comes into play. If the king dismisses a ministry enjoying the confidence of the House, which again, as the result of the ensuing election shows, represents the will of the people, the king has violated the constitution and will be held responsible by the people.

Not lightly, therefore, but with extreme caution, would a sensible monarch attempt to use his prerogative of dismissing or forcing a resignation of the ministry. In a letter to Lord John Russell, who suggested a dissolution in 1846, Queen Victoria speaks of the power of dissolving parliament as "a most valuable and powerful instrument in the hands of the Crown, but one which ought not to be used except in extreme cases and with a certainty of success. To use this instrument and be defeated is a thing most lowering to the Crown and hurtful to the country." But granted a certainty of success the right of the monarchy to dismiss the ministry is a right which may be exercised without fear of the results, and its successful exercise only serves to enhance the monarchy in the eyes of the people, and to elucidate and confirm the apparent paradox that the principal safeguard of the popular liberties, as against parliament and government, is to be found, not in the rule of the people themselves or of their representatives, but in the rule of one socially furthest removed from the masses, and independent of them in the title by which he succeeds to the position of ruler.*

* For an interesting discussion on the relation of the English monarch to his ministers see Sheldon Amos, "Fifty Years of the English Constitution," ch. III. sec. II.

CHAPTER XVIII

THE STATE—THE FUNCTIONS OF SOVEREIGNTY

THE functions or powers of sovereignty generally enumerated are three—legislation, government and judgment. Laws have to be made, laws have to be executed, *i.e.* the country has to be governed in accordance with the laws, decisions in justice have to be rendered in accordance with the laws.*

Let us consider these three functions of sovereignty separately.

LEGISLATION

Relation of civil to natural law.

Civil or State law, as already explained, is related to natural law in a two-fold way. Some State laws are nothing more than promulgations, confirmations, and enforcements of the natural law. For instance, the natural laws of justice are accepted in every State. Now these laws might not be known to the people unless they were promulgated by the State; they might be held in very small account unless they were adopted and confirmed by the State; they might be violated

* Aristotle distinguishes three functions: deliberation (*τὸ βουλευόμενον περὶ τῶν κοινῶν*), government (*τὸ περὶ τὰς ἀρχάς*), judgment (*τὸ δικάζον*). The enumeration is not quite the same as that given in the text, it is rather an enumeration of the powers of government, as actually divided and allotted at Athens in Aristotle's time, than an enumeration of powers distinct in their very conception. Thus under deliberation Aristotle includes not only law-making but also all the other matters assigned to the deliberative body—the citizens at large at Athens, viz. war, treaties, the inflicting of death, exile, confiscation, the auditing of the magistrates' accounts. Many of these are really executive functions.

freely and with impunity unless they were enforced by the State. The State, therefore, makes the natural laws of justice its own. The function of other State laws is to fill in and make concrete and determined the general or abstract requirements of natural law (*determinans indeterminata a lege naturae*), and these laws are known as civil or State laws proper. Thus the natural law binds men to the support of the State, decrees that some form of government be adopted, calls for the punishment of crime, etc.; but it is left to the civil power to determine how the State is to be supported (whether by taxation or by voluntary contribution, whether by direct or indirect taxes), what form of government is to be established (whether monarchical, aristocratic, or democratic), and what the punishment to be fixed to each crime. All civil or State law consists in the acceptance or application of natural law in one or other of these ways, and, therefore, all civil law is to be regarded as based on, and as sharing in the sanctity of natural law.

The organ of legislation.

Our chief interest here lies in the organs of legislation provided in the case of democracies. In ancient Athens as also in some of the modern cantons of Switzerland, as we have seen, the laws were made directly by the people themselves. In all the larger democratic States (even those that have in them an admixture of royalty) the laws are made by parliament, *i.e.* bodies of men to a very large extent elected by the people and representing the people. We say, "to a very large extent," because in many countries there is, besides the representative and elected element, another element also in parliament, consisting of men not elected and not representative of the people, but holding their position either by special appointment by the monarch * or hereditarily

* As in Italy.

and because of their rank in society.* This non-elected element usually belongs to the Upper House of Parliament, not to the Lower House—a distinction of which we shall say something presently; but since in most democratic countries the position of the Upper House is subordinate to that of the Lower,† so, it is the elected representatives of the people that in most countries exercise the chief influence and control over legislation.

We said that laws in democratic countries are made by parliaments. As a matter of fact, the head of the governmental or executive department is also in most countries given a certain degree of control over legislation, but in nearly all cases, machinery is provided whereby the opposition of the head of the government can finally be overcome, so that in the end it is parliament that exercises complete control. In England, for instance, the king is given a veto on legislation, but that right of veto he would hardly dare to exercise in opposition to both Houses of Parliament, or against the Lower House if elected on the particular issue in question. In America the president has a veto, but a two-thirds majority in parliament can always prevail over his veto. In France, the president has no veto, he can merely return a measure passed by the two Houses, for reconsideration. In the end, therefore, it is found that legislation is a function of parliament mainly, and in parliament the chief control belongs, in nearly all cases, to the elected element or House of Representatives.‡

The party system.

For the most part, parliaments are worked according to the party system. Looked at in the abstract there

* As in England. In Italy also many of the members of the Upper House succeed by inheritance and rank.

† In Germany, in which the monarchical and aristocratic element is much more prominent than the democratic, the Upper House is very much stronger.

‡ Where the Upper House is elected it has nearly equal control over legislation with the Lower, *e.g.* America and Switzerland.

is really no reason why there should be parties at all. It should clearly be possible for each member of parliament to record his own opinion, independently of others and without combination with others, in connection with each measure as it arises. Indeed, it would seem that where the party system prevails the true conditions of popular government can hardly ever be realised; first, as Rousseau tells us, because party compromises prevent the people from expressing their true will (the general will) in the election of their representatives; * and, secondly, because these representatives when sent to parliament seem to be more intent on supporting one another than on carrying out the wishes of the people whom they represent.

But as a matter of fact the party system is necessary and unavoidable, and will be found not to be without its uses. As long as men are men they will combine to carry out certain projects, and as long as there is combination there will be compromise; there will be men who in order to achieve the things in which they are much interested, the larger and more important projects, are prepared to sink their differences on minor points, and it is such combinations as these that are known as parties. Moreover, as we said, parties are not without their uses. Indeed, parliamentary parties are more than useful; they are even necessary and for the following reasons: first, in order that parliament may reflect the mind and attitude of the people it represents. It is a mistake to think that parties are a creation of parliament alone. The people also, independently of parliament, are divided into parties, for the people also have their larger or more important as well as their minor interests, and the latter they are prepared to sacrifice in deference to the former where the successful attainment of the greater interest requires sacrifice of a

* Rousseau is in reality opposed to the whole representative system. He maintains that the people cannot alienate their legislative sovereignty and place it in the hands of representatives

smaller, and combination with others on this basis of sacrifice. Indeed, for the work of parliament there is need *amongst the people* of a certain amount of party combination and of give and take of the kind described. No progressive programme could ever be carried through unless behind parliament there was a "solid mass of steady votes" urging a particular policy, and, for the continuance of such support and such pressure on the part of the electorate, some kind of party organisation amongst the people is required.

Secondly, parliamentary parties are necessary for the expeditious fulfilment of parliamentary business. It would lead to too much confusion and waste of time if every man were to indulge his own fads and bring forward on any occasion in parliament any measure that occurred to him as of public utility. Most of such proposals would be sure to be rejected, and the time of parliament would be taken up with the negative work of their rejection.

Thirdly, without the party system there would be no order or system or consistency in legislation. As made up of single unrelated units, a body of six or seven hundred members of parliament is nothing more than a disorganised mob, speaking with a Babel of voices and representing a wilderness of divergent opinions. Under the party system the same body becomes an organised whole, or is divided into two or more organised wholes, each representing a certain unity of view and a certain tradition. Thus, as each party or combination of parties comes into power, a definite and consistent line of legislation begins to be followed, and is pursued during such a period as allows of the accomplishment of some definite and connected legislative programme.

It is important also to remember that, whereas without parties the work of legislation is unduly retarded, much useful legislation excluded altogether, and unity and consistency in legislation rendered impossible, on the other hand, the greater the number of opposing parties

the less expeditious will the work of parliament become, and the less unified and harmonious will be the legislation actually carried. For, the greater the number of parties the more time will be wasted in the rejection of useless or unsupported measures, and the greater the number of new departures in the work of parliament as successive elections return different parties to power. Hence, although the complete abandonment of the party system is neither possible nor desirable, it is obvious that the more men aim at expedition and at some kind of " consonance with diversity " in the work of legislation, the more will the different parties tend, if not to disappear, at least to coalesce, the final result being a tendency to a dualism of parties with sub-parties under, or connected with them, all looking for as much as they can secure of their own particular programme, and all prepared, in order sooner or later to secure these ends, to submit to the direction of one of the two great party leaders.

The dual-party system.

Certain disadvantages at once suggest themselves in connection with this system, which are for the most part only the general difficulties already mentioned, but enlarged and intensified by the greater decisiveness of party under the dual system. In the *first* place, this system is an attempt to " squeeze a great many varieties of opinion into two rather rough moulds," and often it is hard to see that the moulds can really bear all that is pressed into them. Party coalescence is often exceedingly violent and artificial, and the result can hardly be such as makes for healthy and free development in the political life of the people. *Secondly*, where there are only two parties, the strife of parties is liable to be exceedingly bitter on account of the immensity of the differences in their respective programmes. *Thirdly*, the dual system leads to the avoidance of much good legislation. No individual group would dare even to propose a measure of any importance if by any chance it might lead to disruption of his particular party. *Fourthly*, in pretending to swallow the whole programme of the party, with much of which the individual must necessarily be in disagreement,

members of parliament degrade themselves and are untrue to what they conceive to represent the real interests of the community. *Fifthly*, where the heads of the Executive are chosen from the members of parliament, as is the case in England, the government will naturally be representative of one party only,* and many eminently suitable men will be excluded from position simply because of the party opinions which they profess. *Lastly*, under this system the body of opinions held by a particular party at a particular period becomes so stereotyped that departure from any portion of it is rendered well-nigh impossible, even though that portion is no longer really a necessary portion of the party creed. It is certain, for instance, that many Conservative members, feeling little or no antipathy to home-rule for Ireland, are compelled to oppose it for the sake of maintaining the party tradition.

The advantages of the dual system are also the advantages of the party system generally, but again improved and intensified. *First*, although, as we have said, under this system a great variety of opinions are squeezed into two rather rough moulds, it is just these large rough moulds that represent most truly the "simple and massive views which Englishmen are accustomed to take in Politics," and in the formation of which the ordinary Englishman is not meticulous as to harmony or consistency; moreover, these moulds are not so rough as would at first sight appear, for under the dual system the party is, normally speaking, regulated according to some general underlying policy or principle which lends to the party programme a certain degree of consistency and unity, one part of the programme being a necessary accompaniment of another, or a logical development out of it. Who will deny that the various measures advocated by Liberals in England during the last fifty years represent a fairly consistent programme, or maintain that the Conservatives in opposing these measures have not also been largely consistent with themselves? *Secondly*, under the dual system, parliamentary criticism is bound to be persistent and keen, whilst, on the other hand, its criticism will hardly be irrational: an Opposition is hardly likely to indulge in useless attack on an obviously good and necessary measure, seeing that they may themselves later be compelled by force of circumstances to have recourse to a similar measure to that now advocated by the

* In Switzerland nearly all parties are represented in the Executive —the Federal Council.

ruling party. *Thirdly*, under the dual system, at least where parliamentary government obtains,* there is nearly always one outstanding man who succeeds almost automatically to the office of Prime Minister, viz. the leader of the party returned to power, and thus this great office comes to be filled almost directly by the people themselves at each election. On the other hand, where many parties exist, the selection of the Prime Minister devolves on the head of the Executive,† thus lessening the people's prerogative and control over the policy of the government, and at the same time imposing on the head of the Executive, *i.e.* the king or the president, a task which is bound at times to become not only difficult but most invidious. *Fourthly*, under the dual system, the Cabinet is bound to be a more or less consistent whole and can act with all the force and decision that such unity and consistency afford. A many-coloured or coalition government, such as must obtain where there are many parties, is always weak and ineffective, and except in abnormal circumstances is inferior in every way to the single-party Cabinet. One feature of this greater efficacy of government under the dual party system is the high degree of stability which the conditions of the dual system make possible in government. A heterogeneous government is always unstable, and its instability is bound to communicate itself to, and reflect itself in, many departments of the life of the community other than the purely political departments.‡

The two-chamber system of legislation.

In most § democratic countries the legislative organ consists of two chambers, an upper and a lower, whose joint consent is normally required for the passing of legislation. The primary end of this system, the end which is common to every legislative system formed on this model, is the opportunity which it affords for revision of legislation by a new body either representing the people in a new way, as in America and France, or

* See p. 596.

† In France it devolves on the president.

‡ For an able dissertation condemnatory of the party system, and particularly of party and parliamentary government, see Treitschke, "Die Politik," I., or "The Political Thought of H. Von Treitschke," p. 189, by H. W. C. Davis, M A.

§ In Greece and Bulgaria there is only one chamber.

representing a different set of public interests, as in Germany, Italy and England.*

According to some writers, revision of the legislative measures introduced into the Lower House is necessary merely on account of the immoderateness of many of the peoples' representatives, or the fact that so often they do not fully represent the mind of the people. "If we had an ideal House of Commons," writes Bagehot,† "perfectly representing the nation (and) always moderate . . . it is certain that we should not need a second chamber. . . . And whatever is unnecessary in government is pernicious." Now there can be no doubt that amongst the representatives of the people the possibility of immoderateness, selfishness, and treachery will always be an evil to be reckoned with, and, therefore, revision of the legislative measures of the Lower House will always on this ground be desirable and even necessary. The Lower House is often ruled by mere temporary majorities who would be willing to sacrifice the permanent interests of the people for the sake of some passing public or private advantage; or the legislative programme of the House may have been placed most imperfectly and confusedly before the country at election time, so that a popular mandate could not be claimed for any, not even the more important, part of that programme. In these cases, of course, revision by an Upper House is manifestly a requirement of the public interest.

But revision by an Upper House is necessary, not merely as an antidote to immoderateness and possible disloyalty towards the people on the part of the Lower

* John Stuart Mill considered that full legislative deliberation did not require the introduction of second chambers, since in any properly constituted Lower House ample opportunity could, and should be given for second deliberations. He forgot that the advantage attaching to the two-chamber system lay, not in the possibility it afforded of second deliberations, but of second deliberations *by a new body*. The chief defect, according to Mill, of the Single Chamber system lies in "the evil effect produced on a holder of power by the consciousness of having himself only or itself to consult."—(Rep. Gov. p. 97).

† "The English Constitution," p. 107.

House, but also apart from such undesirable tendencies and possibilities. Revision by a new body would be desirable even if the Lower House consisted of the cleverest, keenest, and most conscientious of individuals, and for the simple reason that even of the keenest heads the old adage holds that two are better than one; in other words, even with the very best of intentions, the true interests of the community may sometimes be mistaken, and the mind of the people be misconstrued, and in that case it is a good thing that a new body should be present, with power to check and revise measures before they are passed, and even to reject these measures altogether until a decisive popular mandate shall have been obtained upon them. This is the chief and essential function of all Upper Chambers.*

But a body of this kind once brought into being is very often entrusted with other important functions, secondary functions, of course, for which by its character and constitution it seems to be specially suitable, and very often these special functions impart to the Second Chambers possessing them a strength and an importance in the constitution which they would not otherwise possess. Sometimes Upper Houses are given the power of vetoing treaties, as in America, sometimes of appointing to offices (in America all appointments of government requires the consent of the Senate). In certain countries the consent of the Upper Chamber is necessary for a dissolution of the Lower House, *e.g.* in France and Germany, whilst in some countries it can actually itself dissolve the Lower House, as in Germany. Again, in England the Upper House is a final Court of Appeal in judicial matters. In America it tries for impeachment. In France it is constituted a Court for the trial of all cases of "attempt on the safety of the State." In federal States, in particular, the Upper House exercises

* An aristocratic Upper House is also supposed to defend the special interests of the more wealthy and highly placed amongst the citizens.

a very special legislative function which finds no place in countries built on the unitary principle, and it is mainly this function which imparts to the Upper Houses of federal States their most distinctive and important character. In federal States the Upper House represents the several component States in the federal parliament, just as the Lower House represents the nation at large. All these special characteristics and powers are a source of great strength and added dignity to the Houses to which they belong.*

The case of dead-lock.

One of the chief dangers attaching to the two-chamber system is that of dead-lock, arising between the Houses. Of course if the Lower House is willing to abandon the particular measure which is vetoed by the Upper House the case of deadlock does not arise. But if the Lower House insists upon its programme, and particularly if all legislation is blocked by the opposition of the Senate, then unless an

* They are not, however, all equal as sources of strength in an Upper Chamber. By a strong Upper House is meant one which could hold its own in a conflict, whether with the Executive or with the Lower House, and which could count, in entering on such conflict, on a fair degree of support from the people. The chief source of strength to a Lower House, and of relative weakness to the Upper House, consists in the existence of the system of parliamentary government, that system, viz. under which government is compelled to resign on an adverse vote given in the Lower House. Thus, where government is non-parliamentary, second Chambers are correspondingly strong, as in America and Germany. Again, second Chambers are strong in federal States because of their special function of representing the component States. In highly centralised countries like France the second Chamber tends to be weak. Special executive and judicial functions are also, as we saw, a source of strength. An interesting problem arises in the case of the French Senate. Over and over again it has proved itself a strong Chamber, capable even of forcing the resignation of the government, even where the government was not opposed by the Lower House. Now, in France we have an instance of a highly centralised governmental system; it possesses the parliamentary system of government; and the Senate has very few special functions. How then can the Senate be strong? We answer—the Upper House in France is not strong of itself. But it is strong enough in comparison with the Lower House and the government. For the Lower House is broken up into many parties and is often divided against itself, and government has, therefore, a weak reed on which to rely in the Lower House. In this way the Upper House has constantly asserted its power with success. See Lowell, "Government and Parties in Continental Europe."

appeal to the people is possible, deadlock may ensue between the two chambers, causing the gravest inconvenience to government and the people. It is strange, therefore, in how few countries machinery is provided for the removal of such deadlock. In America no machinery is provided. In case of dispute representatives of the two Houses meet and wrangle and generally effect a compromise, but constitutionally there is no means of removing deadlock when it arises. It is the same in Germany and France. In Italy recourse is still had to the now disused English custom of creating peers to break down the opposition of the Upper House, whilst England has now provided for the case by rendering opposition in the Upper House impossible after a measure has passed the Lower House in three different sessions within the lifetime of a single parliament. In the Australian Commonwealth, after two disagreements between the Houses, parliament is dissolved, and, if after the election disagreement should continue, the Governor General convenes a joint session of both Houses where the vote of an absolute majority of the total number of members is decisive. In the Argentine Republic an increasing majority is required for rejection at each successive stage of the Bill as it is sent from one House to the other.

The Executive

It is not easy to find a single word which will successfully comprise all the powers usually assigned to the sovereign governing body—the supreme executive in any community. Usually, however, it is spoken of simply as the executive. Roughly the functions of this body are, first, to maintain the State and to devise means for its maintenance such as taxation, public property, etc.; second, to carry out the laws passed by the legislature, and to administer the State in accordance with those laws; thirdly, to punish those citizens who violate the laws; fourthly, to determine the foreign relations of the State * and to declare and

* It is not always easy to know what are, properly speaking, legislative acts, and what are executive acts. The distinction is not always determinable through the bodies to which these acts are severally entrusted. Taxation is certainly an executive act, though all budgets are passed by parliament; war and treaty-making

carry on war. To the executive, in fact, belongs the whole residue of the public functions not included in the two conceptions of "legislation" and "judgment."

The supreme executive power is exercised by the sovereign executive body of the nation. But this body delegates its powers to many other subordinate persons and bodies, generally spoken of as the officials of the government—the Army, the Navy, the Civil Service, the Police, etc. Part of its powers it also delegates to the local bodies which it entrusts with the management of purely local affairs—the local executives. But the supreme, the sovereign executive power rests always with the central executive.*

Any attempt to determine the requirements of the moral law in regard to all these functions of government would be out of place in a work like the present and would belong more properly to a work of casuistry in the domain of Social Ethics. We believe, however, that the principles already laid down in the present volume on the duties of the State as determined by its end will be found to be not only useful but also amply sufficient for the solution of most of the moral problems arising in connection with government.

We may, however, be allowed to say a brief word here on one of the most important of the special duties of government, a duty which, as we have said, though exercised subject to the consent of the legislature, is still properly speaking a duty of the executive, viz. taxation. Taxes are certain payments exacted by the

also, though often placed to a large extent under the control of the legislature, are really executive acts.

It may help the reader to understand what is meant by the supreme executive when we say that in England the supreme executive consists of the Crown and the ministers (the Cabinet), in France of the President and Cabinet, in America of the President, in Germany of the Emperor represented by his Chancellor, and the Upper House or Bundesrath. The Upper House in Germany is at once a legislative chamber and the supreme executive council of the nation.

* In a Federal State like America there are many central bodies dividing between them the sovereign executive power of the nation, viz. the central federal executive and the central executives of the component States.

public authority for the special purpose of maintaining the State and enabling it to attain its end. Money paid for any other purpose than this, *e.g.* fines inflicted for violating the law, fares paid on State railways for value received, is not, properly speaking, a tax. The State enjoys a right of taxation because it has a right to take the means necessary for its end, and its end being, as we saw, natural, this right is also based on natural law. In this ground we also have the *measure of the right* enjoyed by the State in regard to taxation. The State has a right to raise only such taxes as are necessary for the exercise of the public functions. These functions are, of course, exceedingly wide; they include not only the things that appertain to the very life and existence of the State but also all kinds of public utilities; and, as the State develops, these functions grow often at a surprising rate. Nevertheless it is important to remember that the State can impose taxes only up to the measure of what is necessary for the exercise of these functions, and that to impose taxes merely for the purpose of enriching the State, or for the benefit of private persons only, is a grave injustice to the community. Certain conclusions are suggested by the foregoing principle. First, it is the bounden duty of the State, an obligation binding in the strictest justice, to avoid a plethora of public officials, for the support of whom taxes have to be levied; and where, on account of special circumstances, a certain increase in the number of officials becomes temporarily necessary, it is the duty of government to reduce this number, so far as the existing rights allow, as soon as the special circumstances disappear. Again, in England the House of Commons is given ample control over all *increases* in expenditure in the various departments of government, but it has, *in practice* no opportunity of effecting *reductions* in expenditure, the estimates of one year being generally accepted (in spite of the warning given each year by the Treasury to the departments) as necessary for the

following year also. This is not as it should be. Estimates should not be allowed to become stereotyped in this way and open to alteration merely on the side of increase. It is the duty of the State to reduce expenses where possible as well as to avoid all unnecessary increases.* Again, any kind of favouritism in the giving away of contracts is a grievous wrong, not only against the several competitors but against the public at large, who in the end have to bear all losses in money and efficiency arising out of the restricted competition. We believe also that it is the bounden duty of every government to exclude from the headships of the public departments all persons known to belong to any society which binds its members to give the preference to certain sections of the community, even under the well-known and most insidious *proviso*, " other things being equal." To be bound to give preference in the case of governmental contracts on any other basis than that of the public interest should at once disqualify a man for all positions concerned with the giving of such contracts; and to allow of his retention of such a position is a grave offence against justice and a grave public scandal.

Distributive justice requires that taxes should be distributed roughly in proportion to wealth. The man who earns a livelihood only, *i.e.* a livelihood for himself and his family, should be exempt from the duty of paying taxes, at least such taxes as are directly paid. We make the distinction because, where taxes are paid indirectly and particularly where they are paid on foods normally used by the people (tea, *e.g.* is now a normal food for all), these indirect taxes are allowed for, in determining the wages paid to workmen. But for the most part direct taxes should be made to fall on the

* The system obtaining in England whereby the departments are made to return all unspent surpluses to the Treasury at the end of each session leads to the gravest abuses. Any ordinary department will spend its surplus no matter how prodigally, rather than return it, in order that the level of the estimates may be maintained in the following session.

rich and in proportion to their riches. They should be charged also according to a progressive scale, the rate of increase rising more steeply in the case of the higher incomes than in the case of the lower.* In this matter, however, it is not easy to say where real violations of justice occur. As regards the imposition of taxes one can only insist on the general negative principle that undue burdens should not be placed on the shoulders of any section of the community. The detailed carrying out of this general law is a matter for reason and experience and a legislator's good sense of justice and fair dealing with the citizens.

The Judicial Function

The third function of sovereignty is that of declaring and maintaining justice. The problem of justice arises in two cases; first, *civil* cases where no crime is alleged, and, secondly, *criminal* cases where the law is alleged to have been violated and satisfaction is sought in the courts of law. In both cases the litigant on either side may be either an individual or body of individuals or even the State itself represented by the government.

Duties of the judge.

(*a*) A judge is supposed to possess the necessary skill and knowledge required for the proper discharge of his duties, and any attempt to discharge those duties without the required degree of knowledge would be gravely sinful and would impose an obligation of restitution in respect of all wrongs sustained by either of the parties through want of knowledge in the judge. A judge is under no obligation to be omniscient even in the domain of law, but at least he should be well versed in the law,

* Care, however, should be taken in effecting these steeper increases not to stop accumulation of capital by rendering all further rises in income useless. The free accumulation of capital is absolutely necessary in the public welfare.

particularly in the law applicable to any case which he undertakes to decide. If necessary also he should seek advice from others.

(*b*) Judgment must be rendered according to law—provided the law to be administered is not obviously unjust. To inflict a penalty greater than that which the law prescribes is a sin and would give rise to an obligation of restitution.

(*c*) A judge must decide according to the public depositions of the witnesses and not according to purely private information. In *criminal cases*, to condemn a man on private information when his guilt cannot be established in court would be a grave sin. On the other hand, the opinions of authors vary as to the duty of a judge who knows, from private information, that the accused is innocent, but who is guilty according to the depositions. In such a case the judge should certainly do everything to establish the innocence of the accused, but if his innocence cannot be established it is his right and his duty according to St. Thomas to judge according to the depositions of the court, even if it is a trial for life. Other authors maintain that in all cases of very grave moment, like that of a trial for life, the judge might make use of his private knowledge and acquit the accused. In lesser cases, and particularly in regard to crimes that are attended by light punishments, it is maintained that a judge should find according to the depositions of the court.

(*d*) An interesting question arises in regard to civil cases, viz. whether it is the duty of a judge to call the attention of the court to some important fact which an advocate, either through ignorance or carelessness, has failed to bring to its notice. In general it is not the official duty of a judge to produce the facts or to see that they are produced. That is the official duty of the advocates on either side, and for this a judge may always rely on the ability and integrity of the opposing advocates. It is even better that in general he should

do so, since otherwise he might be suspected of favouring one side. But the question arises—granted that an important fact is being omitted, may he or ought he to bring it to the notice of the court? There seems to be no difficulty where the fact in question is a public fact, or where at least some remote and implicit reference has been made to it in court. For then a judge can hardly be said to use his private knowledge. But if the fact is private and no reference has been made to it in court, direct or indirect, the problem is anything but clear. There are some authors who declare that in no case could a judge make reference to it in court, since such reference would amount to pleading for a particular side. Others consider that the judge has a full right, and even ought to do so, since it is the first duty of a judge to do justice between the parties; he, therefore, has every right, as well as a duty, to ask any questions that have a bearing on the case so that justice may be done. But there can be no doubt that a judge who omits to have produced the relevant facts could not be bound to restitution, since, as we have already said, the understanding, at least in these countries, is that this is the official work of the advocates and not of the judge.

(*e*) Where the evidence is certain, a judge should decide accordingly. But what of doubtful cases? In doubtful criminal cases a judge ought to favour the accused. In doubtful civil cases a possessor ought to be left in possession until his right is disproved. Where neither is in possession, some compromise ought to be effected.

Obligations of advocates.

Advocates also have definite obligations towards the law and towards their clients.

(*a*) An advocate should not undertake a case unless he is possessed of the required knowledge, and having undertaken it he should give it all reasonable care and

attention. He is responsible for all losses to his client occurring through want of either.

(*b*) In a civil case an advocate should not undertake the defence of a cause which he knows to be unjust, and if its injustice should become manifest during the hearing of the case he should resign his brief. The reason is that, if he should win, his advocacy is the means whereby a definite and certain injustice is done to the other party.*

(*c*) In civil cases an advocate can make use only of just means to further his case. If he wins by injustice, for instance, by producing false witnesses or documents, he is bound to restitution.

(*d*) In criminal cases an advocate may undertake the defence of an accused person whom he knows to be guilty, provided he uses no fraudulent or unjust means in the defence.

(*e*) An advocate should examine his client thoroughly beforehand, and to the best of his ability warn him of the state of the case, *e.g.* that it is uncertain, and that an action would be dangerous. If he fails to do so, and if it is certain that his client would not have brought an action known to be doubtful, he is bound to restitution in case of loss.

(*f*) To cause unnecessary delay *in order* to increase his fees is a very grave sin in an advocate, and gives rise to a grave obligation of restitution.

Trial by Jury.

The co-operation of lay-men in the administration of justice is not without its dangers, but on the whole it is

* It is sometimes said that an advocate may take up a civil suit which he knows to be unjust, because an advocate is merely an official for stating the case on a particular side. This argument is quite unsound and for two reasons. First, in an obvicusly unjust suit there is only one case, that of the opponent; secondly, in civil cases, unlike criminal cases, an advocate pleads not only in favour of his own side but *as against the other*, and, therefore, if the case is known to be unjust, he knowingly aims at inflicting an injustice on that other, and it is through his advocacy that such injustice will be inflicted.

now universally believed these dangers are outbalanced by the many advantages attendant on this system. The dangers are; first, that a jury will be "over susceptible to the prompting of the emotions," in other words, that they are not possessed of the judicial temperament; secondly, there is danger of insufficient knowledge; thirdly, there is the very grave danger of party influence. The advantages are that "the finding of a verdict requires a practical experience of life, which a judge is apt to lose"; that a jury of one's countrymen will incline in the first instance to favour the liberty of the subject, and rightly so, since the liberty of the subject should be a first consideration in all judicial acts: also that twelve heads are better than one, particularly since as in England the jury is not concerned with questions of law but of fact only, questions with which they are fully capable of dealing.*

In England, also, for a verdict there must be unanimity on the part of the jury. In the words of Treitschke, "the demand for unanimity, despite its rigour, is on the whole fully justified." It seems an absurd proceeding, for instance, to allow the vote of a single individual, as in the majority system, to determine whether a man will be allowed to be hanged or go scot free. Treitschke's own recommendation is "a form of trial by judge and jury, in which the practical experience of the judge shall co-operate in the decision on the nature of the offence and the guilt or innocence of the accused. But, on the other hand, the laymen shall have a voice in the apportioning of the punishment."

Theory of the Separation of the Powers of Sovereignty

Since Montesquieu † wrote his "De l'Esprit des Lois," his doctrine of the separation of the functions of sovereignty has assumed very great importance in political theory. Briefly this doctrine is to the effect that the legislature should be distinct from the executive and both of these from the judicature, *i.e.* that all these functions should be placed in completely separate hands.

* For the discussion on the advantages and disadvantages of the Athenian dikasteries (corresponding to our modern juries) see Grote, "History of Greece," vol. II. ch. xvi.

† 1689–1755.

The theory is based principally on the two following arguments: first, that the analogy of other organisms than that of the State suggests the separation of the powers. In a natural organism each function is entrusted to a distinct organ. The eye is made to see only, the ear to hear only. It is in this way that the balance of function is maintained in all natural organisms, and in this way also it is maintained in the organism of the State. If the executive function and the legislative were entrusted to the same body, one would certainly be given the mastery over the other, and the organic balance of the functions could not be sustained.* Secondly, it is claimed that separation of the powers is a necessary condition of justice and the freedom of the subject, and as this is the main reason usually adduced for separation of the powers we may be allowed here to consider this second argument in some detail, and as applied to certain definite cases.

(1) If the legislative function were confided to the executive, *i.e.* the body charged with executing the law, then (*a*) the executive could legislate at any time and for any occasion or set of circumstances to the great detriment of law and public justice; and (*b*) the people would find themselves completely at the mercy of the government officials, a separate legislature being the only power really capable of restraining the executive in its dealings with the people and of keeping the executive within the law.

(*a*) Laws are supposed to be general in their bearing, *i.e.* they are devised to meet the general and more or less permanent requirements of the community at large. Only in this way can organisation and system be introduced into the community, and only in this way can the balance of justice be maintained between the various sections of the community. If laws, for instance, could be made or altered for each individual case, say in order to determine the punishment befitting

* See Bluntschli, "Theory of the State," p. 518.

a particular crime committed on a particular occasion, free rein would be given to passion and prejudice, and little regard would be had to the general claims of justice in providing for such cases. Now government, or the executive, charged as it is with the administration of the State, and faced as it is with problems of administration, not of an abstract but of a highly concrete character at each occasion, is, above all things, interested in particular cases and particular circumstances. Were such a body empowered to legislate, as well as to execute the laws, the temptation would always be present, and at times might prove overwhelming, to legislate in the light of the particular circumstances, and to legislate for the express purpose of overcoming the particular difficulties incident to administration in a particular case. Special legislation would, for instance, be introduced to meet the case of noisy agitators, who were an annoyance to the government, and special punishments would be devised to meet even ordinary emergencies (which the administration so often imagines to be of the nature of crises)—punishments which if applied outside the special times, circumstances, and exigencies, would be certain to meet with public disapproval and resentment.

The gravest danger to be feared in this connection is the danger of *ex post facto* legislation or something akin to it, either of a positive description, for instance, special legislation enabling the government to deport troublesome labour-leaders, or, what is much easier and more probable, legislation of a negative sort, annulling a law that has been violated by some one whom the government is interested in protecting, in the hope that no judge would condemn a man for violation of a law which at the time of trial had already been abrogated. All these possibilities are to be regarded as gravely affecting the conditions generally assumed to be necessary for justice and liberty. In general terms, the liberty of the subject is sure to be outraged where

government is under no obligation of acting within the law. But acting within the law has no meaning in the case of a government that can make laws upon any and every occasion (a power that would certainly belong to government if it had also the right to legislate), just as it would be absurd to maintain that a man acted up to the rules of the game who could make and alter these rules according as the game proceeded.

(*b*) This last argument can be confirmed by considerations based on the necessity felt in every State of providing in parliament itself some effective check on the free and unfettered exercise of governmental power. In every modern parliament the legislature enjoys the right of "question" or "interpellation," *i.e.* the right to call upon the ministers of government to give an account of their stewardship and to explain and justify not only their own acts but also the conduct of the subordinate officials. For this purpose, even where ministers are not members of the Lower House, they can be arraigned before the Lower House, and in most cases are even supposed to be permanently present or represented before that House in case the need for question should arise. Unsatisfactory explanations may be followed by a vote of censure, the enforced resignation of government, or the refusal of supplies. On the other hand, if legislation and administration were functions of the same body, this right of question or interpellation would have neither place nor meaning.

In particular we may be allowed to refer here to the need of a separate legislature as a protection against prodigal expenditure on the part of the government, and the possibility of excessive and unjust taxation. Many of the departments of government are, above all things, *spending departments.* Were government given free access to, and full command over, the public purse, depletion of that purse and national financial ruin would be the sure and speedy consequence. Even in a country like England, parliament has to exercise

the most ceaseless vigilance, and constantly to review and alter the machinery of control at its disposal, in order to keep the public expenditure within reasonable limits.

(2) That the judiciary should be separate from the legislature and executive is evident from the following reasons: it should be separate from the legislature because (*a*) the judge is the interpreter of the law. Now law should be interpreted, not according to what it is intended to mean, but by what it actually means. It is only in its actual meaning that a law is promulgated, is made known to the subject, and binds the subject. But a legislator is more interested in what a law is intended to mean than in what it means, the legislator being the maker of the law, and being chiefly interested in the effects it is intended to produce; and, therefore, he will be liable to read the intended meaning into it, and if entrusted with the function of judgment will tend to judge according to his own intentions and not according to the actual provisions of his decree. A legislator will not care to acknowledge or to assume that laws have been rendered devoid of meaning or have failed of their purpose through a flaw for which he is himself, to some extent, responsible; and yet such flaws occur, and are possible in the case of any measure. A legislator, therefore, should be regarded as naturally incapacitated from acting as interpreter of his own law, and, as we saw, interpretation is one of the chief functions of the judiciary.

(*b*) The judicial function should also be separate from the *executive*, because government may itself be a party to the suit—*nemo judex in sua causa*. And even where the government is not directly concerned, it may be interested in a particular case from the point of view of the public order, or for some other reason; in that case a judge who is the executive, or forms part of the executive, will be under strong temptation to further his purposes as part of the executive at the expense of

judicial impartiality, acting either on insufficient evidence or according to private information, or in some other fashion at variance with judicial honour and the judicial conventions.*

The three functions of sovereignty, therefore, should be in distinct hands. The proper and efficient exercise of those functions requires it, and, above all, justice and the liberty of the people demand it, for which reason the revolutionaries of France made the separation of the powers a cardinal article in the Declaration of the Rights of Man. A country, they averred, in which the powers are not separate " n'a point de constitution."

Effects of over-separation of the powers.

We have seen that to place the different powers of sovereignty in the same hands would constitute a standing menace to the liberty of the subject. But as in all human affairs there is another side to the picture. There is such a thing as over-separation. If to combine the powers is bad, so to separate them as to break down between them every channel of connection, interaction, and control,† would be attended by consequences equal to, if not more formidable than those which we have just described, and, strange to say, the categories of disorder arising here are to some extent the same as those which we have traced in connection with the contrary system. Let us enumerate just a few of the more obvious consequences of over-separation. (*a*) Where the executive is *completely* distinct from the legislative power, in the sense not only of lying in distinct hands

* An argument is sometimes developed based on differences in the habits of mind required for legislator, administrator, and judge, and the difference in special knowledge required by each (See Mill, Rep. Gov. pp 36–38). We do not attach much importance to the argument.

† As in America. In England although separation of the powers obtains, the Executive is largely dependent on the Legislature. Its members are even members of the Legislature.

but also of having no dependence on it, then government is quite as free to deal tyrannically with the people as in the system where both functions are combined. Questions, of course, may be raised in parliament, votes of censure may be passed, but unless the executive is really under the control of parliament, question and censure are of no avail. "Either House of Congress," says Bryce,* writing about the United States, where separation almost completely obtains, "can direct a committee to summon and examine a minister who though he might legally refuse to attend never does refuse. The committee when it has got him can do nothing more than question him. He may evade their questions, may put them off the scent by dexterous concealments. He may with impunity tell them that he means to take his own course. To his own master, the President, he standeth or falleth."

(*b*) Complete separation of the powers of legislation and government or administration must sometimes end in deadlock between the two. In America if Congress and President hold out against each other there is really nothing to be done. Congress could, of course, refuse supplies. But, as Bryce remarks, "to withold the ordinary supplies and thereby stop the machine of government would injure the country and themselves far more than the President." Of course government can be given the power of dissolving parliament and forcing an appeal to the people, as happens in England, but this power of dissolution supposes a certain control of government over legislation and is inconsistent with the idea of complete separation.†

(*c*) Even though conflict and deadlock do not ensue, still the mere fact that the two powers are in separate hands leads to a certain want of unity and system in the whole work and policy of legislation and govern-

* "The American Commonwealth," I. 210.

† In France, during the Revolution, conflicts between the powers generally ended in a *coup d'État*. Witness, for instance, the bloodless revolution of the 18th Fructidor.

ment. Of the United States Bryce tells us,* that "its branches are unconnected, their efforts are not directed to one aim, do not produce one harmonious result." In great crises this want of unity may be disastrous, and it is for this reason, apparently, that in time of war, the President of the United States would seem empowered in some way to throw off the yoke of the constitution altogether, and to constitute himself dictator. He did so at the time of the war of secession, and as Bryce remarks, "without congressional censure."

(*d*) The executive, through not being represented in the legislature, is deprived of all opportunity of guiding legislation; yet it is the executive that most fully understands the needs of the country, and particularly in the very important domain of national expenditure.

(*e*) Finally we may draw a lesson from the long and bitter struggle of executive against legislature that proved so disastrous to France at the end of the eighteenth century. Where the two powers are completely separate each will struggle for the mastery, and the country will suffer in the result. To the French constitution-makers of 1791, 1793, 1795, and 1799 the one great constitutional problem that presented itself was whether the legislature or the executive should be the stronger in opposition. To that problem they were being constantly brought back by their whole-hearted acceptance of the theory of the separation of the powers. But there was another problem to which a milder acceptance of the same principle should just as easily have turned their attention, yet which in reality never seems to have occurred to them, viz. whether the legislature and executive should really be separate and opposed; whether, on the contrary, it might not be possible, by connecting them up together and placing each, in different capacities, under the control of the other, to make of these two departments not two opposed, but one harmonious system, whilst still observing in all essentials

* *op. cit.* p. 294.

Montesquieu's doctrine of separation. In England the greater prominence was given to the second problem not to the first, and the result was early felt in the unity and smoothness that have now been so long the chief characteristic of the British Constitution. In England parliament controls government, and by a vote of want of confidence can force its resignation. But government can also dissolve parliament, putting the parties to all the uncertainty and expense of a general election. The people are a third factor in this most effective composition of forces, on the one hand resenting the too frequent use of dissolution, both as indicating incompetence and as attended by much commercial loss and disturbance, and, on the other hand, insisting on their ancient right of deciding the issues where really serious interests are at stake. It is "this delicate equipoise," writes Bryce,* "of the ministry, the House of Commons, and the nation acting at a general election (which) is the secret of the smooth working of the British Constitution."

Parliamentary Government.

From what we have just said the reader will have no difficulty in understanding what is meant by the system of Parliamentary Government. It is that system under which government is responsible to, and is controlled by parliament, in the sense that the chief executive is supposed to be chosen from the members of parliament, and can be dismissed by parliament.

In England and France, where Parliamentary Government obtains, the chief acting executive, the cabinet,† is chosen from parliament. Every member of the cabinet in England, every minister, is supposed to be a member of either House. If a minister who is not a member should happen to be appointed, he must seek for election to parliament as soon as possible, and, if after a reasonable period he cannot find a seat in parliament, he must resign. Again, both in England

* *op. cit.* I. 220.

† Neither king nor president must be taken into account here. Both act through ministers. Their acts are the acts of their ministers.

and France the ministry resigns upon a vote of want of confidence by parliament. A government may, of course, before resigning make appeal to the higher court of the people, at a general election. But if such appeal is not made, the government is bound to resign. Parliament may thus be said to exercise over government a kind of jurisdiction analogous to that which the ordinary courts exercise over litigants. They must either stand by the decision of the ordinary court or appeal to a higher court.

In America and Germany, where parliamentary government does not obtain, government or the executive (the president in one case, the German chancellor in the other) does not resign upon an adverse vote in parliament.*

In spite of certain obvious defects the parliamentary system will be found to be the most consonant with the requirements of a democratic State. It gives the people, through their representatives, full control over government. Also some degree of stability is afforded by the fact that the ministry, being chosen from the legislature, will be careful not to run counter to its wishes, and a still higher degree by the fact, which is not of the essence of parliamentary government, but is generally found to be an accompaniment of it, that parliament can be dissolved by the government; for a parliament which can be dissolved by government will not too lightly allow itself to differ in essential matters from the government. Members of the majority in parliament have no liking for the expense and uncertainty of a general election.†

A still higher degree of stability is obtainable, however, under another system which is spoken of sometimes as semi-parliamentary government—a system under which whilst government is appointed by parliament, and for the parliamentary period, it cannot be dismissed by parliament.‡ Whether such a system would work in England is uncertain.

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* We may be permitted to point out here that in England the prime minister or head of the Cabinet is chosen not only *from* parliament but in a sense also *by* parliament. The King is bound to appoint as prime minister the leader of the victorious party at the general election. In France, there being many parties, the president himself exercises a good deal of discretion in the choice of his prime minister.

† The defects of the parliamentary system of government can easily be gathered from the preceding discussions. A powerful criticism of the system is given by Treitschke in *Die Politik*. See Davis, *op. cit.* p. 195.

‡ The Federal Council, the chief Executive of Switzerland, holds office in this way.

Its obvious defect is that once elected the executive is then free of all further parliamentary control.*

The Cabinet System of Government.

Though parliamentary government is conceivable without a cabinet yet the two are in fact coincident in all modern States and tend to be coincident. We shall define the cabinet according to the form which it actually assumes in every modern State adopting cabinet rule. The cabinet is a *body of ministers constituting between them the supreme acting executive and jointly responsible to the legislature for the acts of all and each.* First it is a *body*. If the Chancellor in Germany took over all the work of the departments into his own hands, and, therefore, became the only minister of government, he would not merit the name of cabinet; the cabinet is a *body*. Secondly, the cabinet is a *body* of *ministers*, *i.e.* of the heads of government. Existing cabinets are also bodies of ministers in a further sense, *i.e.* ministers to some ruling individual. In England they are ministers to the king; in France to the president. Thirdly, they are the *supreme acting executive.* In England the king is the *nominal* head of the executive. All acts of government are done in his name. But the King of England, like the President of France, has no power of independent action. He acts through his ministers. Every act of his must be countersigned by them, or at least one of them. They, therefore, are the acting as opposed to the nominal executive. Fourthly, they act with *joint responsibility.* If the cabinet as a whole cannot approve of the policy of any minister he must resign. If he is allowed to stay, the cabinet as a whole is responsible for his acts. Fifthly, the cabinet is responsible to the representatives of the people, to *parliament*, meaning that it must resign if it loses the confidence of parliament.

The English and French ministries, as we saw, are cabinets. The American is not.† The President of America has his

* In Switzerland, where the semi-parliamentary system is adopted, this want of legislative control matters very little. The Swiss executive would never dream of seriously opposing the legislature, much less of challenging it to a trial of strength with the people. The name "semi-parliamentary" government, as applied to Switzerland, is hardly well chosen; the Swiss system possesses not even one of the characteristics of parliamentary government as it exists in France or England. The ministers there are not even members of the legislature.

† The American ministers are sometimes spoken of as a Cabinet, but erroneously.

ministers—the heads of the various departments. But these ministers have no *joint* responsibility to any body, not even to the president.* They hardly even meet as a distinctive body, the function of each being simply to manage the department under his control, and advise the president in regard to the work of that department. Besides, they are not the supreme acting executive. They are in strict truth, and literally, subordinates to, servants of, the President. He appoints and dismisses them at his pleasure. So also the German ministers do not constitute a cabinet.

Of the parts of our definition only one needs explanation —the notion of joint responsibility. Why are the ministers constituting the cabinet jointly responsible? One obvious reason is that government is one great organised act. It cannot be divided up into a number of isolated departments. No minister, therefore, ought to be absolutely free in the department entrusted to him, *i.e.* his work should be carried out with some consideration for the requirements of the others; and, therefore, all are responsible for the policy and acts of each.† Where the ministers are really subject to one head as in America and Germany, it is for the head to organise the work of all; and, so, joint responsibility amongst the ministers becomes unnecessary. But where the ministers are themselves the supreme *acting* executive, the necessity for joint responsibility is found to arise.

A second reason for joint responsibility is that the mind of the cabinet must be one. The cabinet is the advisory body of the king in England, of the president in France, and advice (particularly under the system of parliamentary government, where advice is really of the nature of direction and command and not of counsel merely), to be effective, must be single and definite. To say to the monarch that some of the ministers counselled one thing, others another, would be practically to leave the monarch full discretion to follow what course he pleased, and to revive the almost absolute prerogative of the monarchy before 1834. "Now is it," said Lord Melbourne, after a discussion on the corn

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* The president, however, can dismiss them. They are responsible to him but not jointly

† The necessity for joint control is especially obvious in the matter of finance. If each minister were independent he could beggar all the other departments by too liberal expenditure in his own. In South Africa recently one minister declared that he would not be responsible for the finance of the government if the minister of railways were given a free hand in the work of his department.

laws, "to lower the price on corn or isn't it? It isn't much matter which we say, but mind we say the same thing." It was a rough-and-ready exposition of the chief ground and purpose of joint responsibility.

The Administrative Courts.

We saw that in accordance with the theory of the separation of the powers, the executive should be separate from the legislature, and the judiciary from both of these. In regard to the legislature and executive, however, most modern writers recommend not absolute separation but such a degree of separation as will allow of a certain amount of control being exercised by each over the other, and a certain consequent unity of policy and effort. But the judiciary stands in a totally different position, and all authorities are agreed that to it must be accorded the fullest measure of distinction from, and independence of the other powers. Not only should the judiciary be vested in separate persons, but the judges once appointed should be independent of legislature and executive, both as regards the exercise of their judicial functions and as regards their tenure of office. A judge of the High Court in England is irremovable except on a petition of both Houses.

An interesting case, however, of inconsistency in the application of this general principle of the separation of the powers has here to be considered. In some European countries, by a curious inversion of reasoning, this principle, which in general is regarded as necessitating the complete separation of the judiciary from the other functions, is utilised to yield a directly opposite conclusion in one department of the work of the judiciary. The judiciary, it is said, ought to be separate from the executive; therefore, the judiciary should not be given jurisdiction over executive matters; as a consequence, litigious cases in which the executive is concerned, for instance, cases in which the executive officials are accused of having exceeded their powers, should be made to appertain not to the ordinary courts, but to executive or administrative courts—"tribunals created specially for this purpose, and composed of officials in the service of the government." * In France the judges of these administrative courts are not independent of the executive, for, whereas the judges of the ordinary courts are irremovable, those of

* Lowell, "Government and Parties in Continental Europe," I. 57.

the administrative courts can be removed at any time by the President of the Republic.*

Now it will be obvious that this system of administrative courts cannot be said to accord very strictly with the ideals of political justice. What chance has an ordinary citizen in a suit against the government where the presiding judges themselves are officials of the government and removable by the head of government at will? Far better and juster is the system known as the "rule of law" obtaining in England, under which all cases, whether against private individuals or members of the government, whether the case be one of private or public law, fall to the jurisdiction of one or other of the ordinary courts, to be tried by an ordinary judge, and not under special administrative laws but under the ordinary law of the land. Moreover the whole system is based on a false reading of the principle of the separation of the powers. The principle of separation means that an *act* of legislation should be performed by the legislative body and not by the executive body: that an executive *act* should be performed by the executive body not by the legislature; and that judicial *acts* belong to judicial authorities and not to the executive or the legislature. It does not mean that affairs in which the executive is concerned, should not come before the judiciary. If it did, such cases could never be tried by any court or any judges, whether ordinary or administrative.† Since judicial *acts* fall within the function of the judiciary alone, the exercise of the judicial power, whether in relation to affairs of government or those of private individuals, should be a matter not for

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* In Germany administrative courts also exist, but the administrative judges are there in a "much better position to control officials than in France." In the highest of these administrative courts the judges are appointed for life and cannot be suspended or removed or "transferred without the approval of a judicial tribunal"—(Lowell, I. 296).

† For an interesting account of the history and bearings of Administrative Law, see Dicey, "Law and Custom of the Constitution."

We wish at the end of this long section on the "separation of the powers" to point out that in no country is the theory of separation carried out in its fullness. Just, for instance, as the King of England, the head of the English Executive, has a veto on legislation, so also the President of America has a (limited) veto. And just as in England the House of Lords (a legislative House) is the final judicial Court of Appeal, so in America impeachments come before the Upper House. In England, however, a large measure of separation obtains, and in America much more.

the executive but for the judiciary, and no distinction should be made between an ordinary judiciary and an administrative judiciary or judge or court. Under the theory of the separation of the powers the idea of an administrative judiciary or administrative court is to be regarded as a contradiction in terms.

CHAPTER XIX

INTERNATIONAL LAW

In the first part of the present volume we treated of the rights and duties of individuals, in the second we treated of the family and its place in the community; in the third of the State—its nature, attributes, and powers. There remains the question of the relations obtaining between States, of their rights and duties in regard to one another, or what is spoken of as international law. The following working definition of international law may be provisionally offered for the reader's acceptance: it is that body of laws which determines and defines the rights and duties of the general body of States in their mutual relations and dealings.

We shall treat in the following pages, first, of the immediate subjects of, that is, those who fall immediately within the scope of, international law; secondly, of the different kinds of international law; thirdly, of its nature and character; fourthly, of the existence of a *natural* international law; lastly we shall consider the two special questions of "treaties" and "war."

The Subjects of International Law

International laws exist between States only, and, therefore, only amongst communities possessing the degree of organisation and independence which is required by the essential conception of the State. That conception we have already fully examined. Its two chief characteristics are those of self-sufficiency (in the technical sense explained *) and sovereignty. For the

* See p. 465.

first a certain degree of development and organisation, economic, juridical, and military, is required; for the second the possession of full original underived jurisdiction over the whole people and over every department internal and external of the public life is an essential condition. Through want of the required degree of development and organisation uncivilised communities are generally regarded as lying outside the category of the State, and, therefore, international law is not regarded as extending to these communities.* For want of full sovereignty such communities as the component "States" of the United States and of Germany are excluded. They are not fully sovereign, and in particular they are without sovereign authority in the sphere with which international law is immediately and essentially concerned, viz. the sphere of the external affairs of States.

A question much discussed amongst jurists is whether tributary, client,† and other "dependent" States are subject to international law. The difficulty here is, that such States though technically sovereign, inasmuch as they possess radical jurisdiction over all matters, a jurisdiction also which is not derived from other States, will generally be found to have placed themselves, or been placed, in a position of dependence on some other State, the control of a part of their affairs and particularly their external affairs being placed in the hands of the State to which they have been rendered tributary. Now the position of such States in regard to international law would seem to be as follows: being sovereign these States are naturally subjects of international law; yet having placed, whether freely or not, the control of their external affairs in the hands of another

* These uncivilised communities, however, have their natural rights as against all others.

† It is not necessary to draw fine distinctions here between the various kinds of dependent States. For these distinctions see Lawrence, "The Principles of International Law," p. 61: also Westlake, "International Law," I. ch. 3.

authority it is not to be expected that other States will take cognisance of the radical sovereignty still remaining to these tributary States, they may, therefore, properly be treated as without sovereignty and consequently as not immediately subject to international law. But this practice is not to be regarded as opposed in any way to the general position that the natural unit, coming immediately within the scope of international law, is the sovereign State.

The Kinds of International Law

International laws are divided into *natural* and *positive*. Natural international laws are those laws that arise out of the very nature of the State antecedently to State-agreement or State-act of any kind; positive international laws are those laws that depend entirely on inter-State agreement, express or tacit, or on some kind of State enactment or act. Thus the right of a State to defend itself when unjustly attacked is a natural right. The laws relating to the internment of war-ships by neutrals in time of war are positive laws. Most positive international laws, however, like most positive national laws, will be found to be dependent on the natural law as their ground and purpose, as will be shown in a later section of the present chapter.

Again the distinction is sometimes drawn between *public* and *private* international law. Public international law is that which obtains between States as such; private international law is a system of law that obtains between one State and the subjects or the property of another State under certain conditions, or, it is that system of law which determines the rules to be applied by the courts of a State, in adjudicating upon the rights of private individuals, in cases where competing jurisdictions in different countries are invoked, or where the individual has acquired a domicile in, or entered into legal obligations within the jurisdiction of

another State: as, for instance, the rule by which courts in this country will refuse to decide the title to lands in another country such as France, even in a suit by French subjects resident in this country, or the rule by which, upon intestacy, property in one country is distributed, not according to the law of that country, but according to the law of the domicile of the deceased. Only public law is international law properly so called, and, therefore, when we speak in the present work of international law we may always be understood to speak of public international law only.

A further distinction is that of *universal* and *particular* international law, *i.e.* those laws that are recognised and acted on by all civilised races and those that are recognised and acted on by *certain* States only. The former will for the most part be found to coincide with natural international law, since it is only what is natural that is felt to be required by all.

Ethics being the science of the natural moral law, it will be obvious that the only part of international law of which account can be taken in the present work is the natural international law. Our present chapter, therefore, is devoted to considering the relations of States in so far as these relations are governed by natural law.

The Nature or Character of International Law

The general definition of international law already given may here be allowed to stand, viz. it is that body of *laws* which determines and defines the *rights and duties* of the general body of States in their mutual relations and dealings. Two special questions, however, suggest themselves in regard to the meaning of this definition—first, is international law really to be regarded as falling under the category of law in the proper sense of that term? Secondly, are the rights and duties to which it gives rise *moral* rights and duties, or, in

general, is international law governed by moral considerations, and is it a portion of the moral law?

(1) *Law and the rules of international law.*

It has been pointed out by some writers that what we speak of as international law is really not law in the proper sense, since law is a rule imposed by some one having authority over the persons or communities bound by the law. But States, it is argued, have no common ruler, and the rules which determine their relations are, therefore, not to be regarded as laws in the proper sense of the term. Here, however, we must repeat our distinction of natural and positive international law already given. The natural precepts of international law are grounded immediately upon nature (*i.e.* the natural relations between States as determined by the nature of the State) and ultimately on the Author of nature; and as all States, like all individuals, are subject to the laws of nature and to the supreme lawgiver, so the natural precepts of international law are to be regarded as laws in the strictest sense of the word. They are imposed by One having authority over all States. With the positive rules or precepts of international law, *i.e.* those rules that depend on agreement only, it is quite different. These rules are not imposed by any person or body having common authority over States, and over international relations, but are matters of compact and agreement only, just like the compacts and agreements of private individuals; and, therefore, though, like private individual agreements, they bind in conscience and in law and will be upheld by the Supreme Lawgiver, nevertheless they are not laws in the technical sense of the word, but rules or compacts only, depending for their enforcement on the good faith of the several parties to the contract. Since, however, to separate the two sets of international rules, the natural and the positive, calling the one set laws and the other

by some other name, would be most inconvenient, and since international agreements once made, though not themselves laws, are nevertheless agreements binding the nations in conscience and binding by *natural law* (the duty of keeping to our contracts being a duty of natural law), so it is customary now to speak of the two groups, even those dependent on positive enactment, as laws, and as making up between them the code known as international law.

(2) *International law and morality.*

If doubt is sometimes expressed by writers as to whether international law is to be regarded as dependent upon moral law or is possessed of any moral bearing or character, the reason is because these writers entertain the most erroneous views of what the moral law really is, and what the subject matter with which it deals. International law, it is said, deals with actual needs, with the material wants of States, whereas morality deals with ideals merely, with supra-mundane things, with what *ought to be*, not with what *is*; and not only, it is claimed, are these two categories of things distinct and independent, but the attempt even to reconcile them must often be exceedingly difficult. Now, as we said, this view of the nature and subject-matter of the moral law is altogether erroneous. The natural moral law is nothing more than the necessity of doing or attaining the things that are necessary for our *natural* perfection, *i.e.* the perfection which is obtainable by man within the compass of his natural capacities. As man's nature is given him by the Author of nature, of course it is on the Author of nature that the natural law is *ultimately* grounded. But it is grounded *immediately* upon our human nature itself, and we determine the precepts of this law, not by direct examination of the divine mind, which would be impossible, but by the study of our own capacities and needs, their natural objects, and

the acts necessary for the attainment of these objects. It will thus be seen that the natural moral law is not to be regarded as dealing with ethereal matters, as resting on no need of our material life. The natural law is the law which prescribes the things that are necessary for our human natural perfection, and it includes every kind of natural necessity, necessities of mind and of body, the things necessary for each man personally, and the things necessary in our dealings with one another, the State, which we said is a necessity of nature, and the necessary relations of States. Thus international law, which prescribes the things necessary for States in their mutual relations and dealings, is nothing more than a part of the moral law, and must be regarded as governed generally by moral considerations.

Again, this theory of the non-moral character of international law may be met by the argument that it leads to a conclusion the very opposite of that which it aims at establishing. For the chief purpose of such a theory is to exalt international law in the eyes of the world by representing it as supreme and independent of any other law or person or order of things, whereas what this theory really leads to is the complete bankruptcy of international law. Certain international laws, for instance, are grounded on treaties entered into by a number of civilised States. But if these treaties do not themselves rest on something deeper than themselves, if they do not rest upon a law of nature, enjoining the faithful performance of promises and contracts, and forbidding the violation of treaties as wrong and sinful, then treaties have no power to bind the contracting parties to their performance, and each nation will not only regard itself as free, but will also *be* entirely free, to adhere to or to renounce such treaties just as its own private interest dictates. This is much more than claiming that there comes a time in the case of every treaty when it can no longer be reasonably regarded as binding on the parties; the present theory amounts to

the claim that such a time is always present, that in breaking treaties a nation violates no obligation whatsoever, no matter what the circumstances, and that the only question which a State could reasonably be expected to entertain, in regard to treaties which it is tempted to violate, is the question whether, having violated them, it will be strong enough to defy the hostility of those States with which it has broken faith. Such an understanding of the nature and binding-force of treaties is clearly opposed to the conscience and reason of the world. It empties international undertakings of all reality, of all binding-force, of everything that makes them great and sacred in the eyes of the world.*

That Some of the Precepts of International Law are Natural

Writers of the English school † have long been accustomed to regard all international law as wholly and exclusively a result of treaty, agreement, or understanding between different States. All international laws, they suggest, are based on treaty, express or implied, that is, they are either explicitly formulated in a treaty drawn up by representatives of the States and agreed to on both sides, or they are so widely accepted and acted on by States as to give positive encouragement to the assumption that they will continue to be acted upon in the future as well as in the past. All the rules of international law, it is maintained, can be shown to depend on covenant or agreement of either of these two kinds. What is spoken of as *natural* inter-

* Men entertaining this view of treaties are to be found, not in one, but in every nation. It is only when the interests of themselves and the nation to which they belong are affected that horror is professed, and vehement expression given to theories of an opposite kind.

† See Lawrence, "Principles of International Law," p. 16. Very often this view of international law is implied rather than expressly stated.

national law, *i.e.* a body of rules that are obligatory on a State antecedently to its own acceptance of them, and which would continue to be obligatory whether States continued to accept them or not, is regarded by this school of writers as a pure chimera, unknown to the science of law, and wholly unnecessary for regulating the relations of States in their mutual dealings.

Now this view of the character and origin of international law it is necessary to disprove before going further with our present work, first, because it undermines the firm foundations of international law, and if applied in practice would render all understanding and peaceful communication between States impossible; and, secondly, because it is obviously opposed to reason and the universally admitted principles of morals.

That a system of international law based exclusively on treaty, and independent of all natural principle, would be bankrupt and without foundation, and valueless as regulating the relations of States, is clear from the very nature of treaties themselves. The binding-force of treaties cannot depend on treaty. If it did, every treaty imposing terms on the opposing parties would itself presuppose another treaty binding to the fulfilment of those terms; that again would presuppose another, and so on without end. Unless there was a law of nature imposing an obligation of fidelity to treaties, treaties *as valid acts* could never begin, they could never acquire validity or binding force; and in these circumstances, as we have already said, the only question which a State could reasonably be expected to entertain in regard to treaties which it is tempted to violate would be the question whether, having violated them, it would be strong enough to defy the hostility of those States with which it had broken faith.

Of course, it is to be admitted that nations do often break faith with one another, and depend on the strength of their arms in reckoning the consequences. But it is one thing to take account of the fact that nations often

do wrong and that force is often more relied on than right; it is another thing to claim that there are no natural rights between States, no rights which States are bound to recognise whether they will or will not, and that in violating her engagements with others a State violates no sacred principle by which all States are bound. And that is, in effect, what the present theory amounts to. It is a theory to which no responsible ruler would dare to give public utterance, so evidently is it opposed to the conscience of the nations; it is a theory which is publicly repudiated by all men when their own country has suffered wrong at the hands of another more powerful State; it is repudiated even by those who freely violate treaty obligations, in the efforts by which they attempt to prove that, before their own course was taken, the treaty had already fallen through, through violation of it on the other side.

But our chief aim in the present section is to show that the theory that all international law is based on treaty, and that there are no international laws binding by nature itself, is erroneous and opposed to the principles of human reason. This we shall show in the course of the following series of arguments :—

(1) This theory is based on the erroneous assumption that all rights are founded on State authority,* from which it is concluded that, since States are independent of one another and there is no single overruling State to determine the rights of all others, international rights can depend on nothing else than agreement or treaty between different States. Now this theory we have

* Indeed, it might safely be said that the present theory is only an extension of the view which denies the existence of a law of nature in any department of human action For our arguments establishing the existence of a natural law of good and evil, see Vol. I. ch. iv. See also p. 638 of present vol. for our criticism of the view expressed by Lawrence and others that the natural law expresses an " aspiration " only and not a reality. The moral natural law expresses the fullest realities, because it expresses the sternest necessities of nature.

considered already at some length in an earlier chapter.* We showed that there are innumerable rights which depend, not on State authority but on natural law, such as the right of husbands and wives to fidelity, of parents to the respect of their children, of a man to help in extreme necessity, of owners to their property, and, in particular, owners from whom property has been stolen but who, nevertheless, cannot prove the crime. This right cannot depend on anything else than nature. We instanced also the right of the State itself to make laws curtailing the liberty of its subjects, a right which itself precedes all ordinances of the State and, therefore, could not depend upon State enactment of any kind.

Depending, therefore, as it does, on an assumption which is wholly false and opposed to all admitted belief, the theory that there are no natural international laws, independent of positive treaty or agreement, is to be rejected as without foundation, and opposed to the admitted principles of human reason.

(2) Were the State a purely artificial institution and not natural, it might be possible to assume that international law had no dependence on nature, but rested entirely upon human consent. But we saw in our opening chapter on the State that the State is from nature, that it is an institution required by nature, and possessed of a special natural purpose and character. It must, therefore, have special natural requirements in regard to, and definite natural relations with other States; and, therefore, it has a natural right to the fulfilment of those requirements and a natural duty to observe those relations. It is evident, therefore, that there are in existence certain natural laws, defining the rights and duties of States in regard to one another.

(3) That there exists a large body of positive laws, regulating the relations of States, will be admitted by all. Now, it is possible to show that this body of positive laws essentially presupposes other laws that are not

* Vol. I. ch. xx

positive, *i.e.* depending upon State enactment or agreement, but that are from nature itself and are, therefore, natural laws. For, like the free actions of men, so all positive laws will be found always to proceed from certain natural necessities which they are devised to satisfy or fulfil. Men eat because there is in them a natural appetite for food. They live together because of man's natural desire for society. The State enacts certain sanitary laws because certain things are naturally necessary for health, and health is itself a natural necessity. It is inconceivable that any ruler would introduce laws into his dominion that were purely artificial, that did not represent in some way, or go to fulfil in some way, some natural requirement, however general and indeterminate.* In the same way, all positive international laws depending on treaties and the understandings of nations, will be found to represent some natural requirement in the relations of States, and, therefore, some general natural international law which the positive law is meant to determine and fulfil.

The preceding three arguments are *a priori* and general in character. The following two arguments which are of a more concrete nature will be found not only to make clear the existence of a natural international law, but will also bring us nearer to solving the problem to be treated in the next section, viz. what are the rules of international law that are to be regarded as natural?

(4) It is clear that every *individual* has a natural right in justice to his life, his property, his character, and that any violation of these rights constitutes an offence against the natural law. The existence of a natural law of justice as between individual and individual is undoubted, and from it we can deduce a natural law of justice as between States, or a natural international law of justice. For the natural law, which forbids injury as between one individual and another,

* For the two modes in which positive law depends on natural, see Vol. I. ch. xix.

is not dependent on limitations of space and time; a man has a natural right to his life not because he is an Englishman or a Frenchman or a German, but because he is a man, a natural person; and, therefore, a man's duty to respect the lives of others, is valid and binding not only in regard to persons living under the same government as himself, but in regard to other persons also; an Englishman has no more right to kill a German or an Italian than to kill one of his own countrymen. The relations of justice obtain between human persons as such, between all persons. They do not end at the boundaries of States. The boundaries of States have no significance whatsoever in determining the fundamental relations of justice. They hold for men separated by the widest distances and living under the most diverse governments.

And if relations of justice obtain between individuals of different States, so, also, they obtain between these States themselves. The State, like the individual, is a natural person, a moral person of course, yet a person and natural—naturally incorporated. States are equal to and independent of one another; and just as individuals, because they are equal and independent, have rights as against one another, so also States have rights as against one another. States, for instance, being equal, they cannot use one another for their own pleasure and convenience or otherwise treat one another as subordinate. And these rights belong to States from nature, and they bind even before they are agreed to or recognised by the body of nations.

And what we have said of justice holds true also of the other social virtues, such as benevolence or charity. The individual is bound to love his fellowmen not merely as Englishmen or Frenchmen or because they live under the same government as himself, but as men, and because all form one human family living under the same Supreme Ruler and destined for one home and end. And just as there are laws of charity obtaining between the subjects

of different States, so there are laws of charity obtaining between States as such. A State, for instance, is under an obligation to help another in distress. It is an obligation which is subject to many conditions. It is not an indefeasible duty like that of justice. But, given the required conditions, it is a duty naturally binding upon States, just as charity, as between individuals, is binding and natural.

From the foregoing line of reasoning it is evident that some of the precepts of international law are natural and not dependent on mere agreement or treaty.

(5) Though many of the rules of international law have sprung out of contract between different States, some of the more important and sacred laws have never been made the subject of agreement or treaty. On the contrary, they are universally accepted without need of covenant or arrangement of any kind. Such, for instance, is the law that no State should wantonly destroy the property or the inhabitants of another. This fundamental law of international morality is accepted by all, and is recognised as binding on all States independently of their own acceptance of it. It is a law which all States recognise as one that they *are bound to* and *should* accept, and, therefore, for validity it does not depend upon its being accepted by the body of nations. The assertion, therefore, of Mr. Lawrence that laws of this kind are not laws until they have "met with general acceptance and been incorporated into the usages of States" is wholly groundless. The fact that these laws are not embodied in treaties or other international instrument, is itself proof positive that these laws are not in need of being incorporated in written documents or accepted by covenant, in order to be recognised as binding upon all.

There are, therefore, certain natural international laws determining some of the relations of States, independently of treaties or the usages of society.

The whole preceding line of reasoning will be made

more intelligible and explicit in the following important section, in which we attempt to deduce the chief international laws or principles of law that we accept as natural.

An Enumeration of the Principal Natural Laws Governing International Relations

We shall here attempt to set forth, not in full detail, but yet in some kind of concrete form, the more important provisions of natural international law, first in regard to justice, and secondly in regard to benevolence or charity.

A. INTERNATIONAL JUSTICE

Justice * as obtaining *between individuals* is based on the † natural juridical equality of all individuals *as men.* Individuals *regarded as men* ‡ are naturally equal because they have the same natural final end.§ Juridical inequalities arise from the fact that the end of one thing is contained in or subordinated to the end of another, as, *e.g.* in a workshop where the end of the foreman is the production of the whole work, whereas the mechanics subject to him are entrusted with the production of a particular part only. Where the end is the same, juridical inequality, *i.e.* the relation of subject and ruler cannot arise. On this fundamental equality of all with all, regarded as men, is based the law of individual justice. No man may lawfully interfere with

* We speak here of commutative justice only.

† See p. 81 and foll.

‡ Ruler and subject are unequal as ruler and subject; but as men they are equal.

§ And as we have already seen, I 53, they have the same natural final end because they have the same natural capacities with the same functions and *natural* objects. In general the end of anything, *e.g.* of a plant or of the heart or of the eye is determined by its functions and the object it attains. For a fuller account of the nature and foundations of justice see p. 81 of present volume.

another or with his property, or treat another as means to himself or his own convenience by attempting to exercise control over that other, or interfering with his freedom in any way. To do so would be to treat him not as an equal but as a subordinate. This is one of the first laws of justice obtaining between individuals.

In the same way each State is juridically the equal of every other, since States have all the same end (viz. to promote the welfare of their peoples). Each State is a person (a moral person) sovereign and independent, deriving its jurisdiction from its own nature and the Author of nature, and not from any other State; and, therefore, no State is subordinate to another or may be treated as subordinate.

Following on this conception of the juridical equality of States there emerges a number of rights in natural justice, which, since they are in principle accepted by all, need to be mentioned only very briefly in the present work.

The three chief rights in justice enjoyed by every State are (1) the right of existence and self-maintenance; (2) the right of property; (3) the right of the free exercise of its powers. A word on each of these.

(1) *The right of existence and self-preservation.*

The right to existence comprises the right, first, of *independence*—no nation has a right to subjugate another unless it is injured in some way by the other *; secondly, of *integrity*, personal and territorial—no nation has a right under normal circumstances to deprive another nation of a portion of its subjects, or to take a part of its territory; thirdly, of *peaceable existence* and the loyal co-operation of its citizens—no nation has a right to stir up sedition amongst the citizens of another State. All these rights we comprise under the general right of self-preservation.

* And then only under special conditions to be described later.

This right of self-preservation belonging to every State gives rise also to a right to the use of the means necessary to self-preservation. Some of these means are (*a*) the right of war in defence of one's rights, (*b*) the right in time of peace to set up an army and a fleet, to construct forts, and in general to equip itself *remotely* for war. All these are remote means, and every country has a right to use the remote means of self-defence even in time of peace. It has no right, however, in time of peace to put into requisition the proximate means of self-defence such as mobilising troops or casting large numbers of troops on the frontier; such an act is rightly interpreted in international law as itself an act of war, and is, therefore, illegitimate and disallowed by natural international law.

It will be obvious that in all these cases a State can exercise its rights of self-preservation and expansion only on condition that, in doing so, it injures the rights neither of other States nor of individuals belonging to other States. A State could not seize either on the warships or the merchant service of another neutral power in order to supplement its own resources in time of war.

(2) *The right of property.*

By the *property* of the State is understood its property, first, in the strict sense, *i.e.* State-owned property, like warships, guns, etc.; secondly, property in a wide sense, *i.e.* the property of its citizens. The citizens being a part of the State, their property is also subject *in some degree* to the whole of which they are the part. In a wide sense we shall also regard the territory of the State as part of its property.

The State can acquire and own property by natural law just as the individual can, for the State, like the individual, is a person—not a physical person, but a moral person, and property is an inherent right of

personality. The titles also by which the State acquires property are, with the obvious exceptions of conquest on the one side and inheritance on the other, the same as those obtaining in the case of individual ownership. They include the titles of occupancy, accretion, cession, prescription.

Under this heading of the right to property we propose to discuss very briefly the following three special questions: (*a*) the question of State-occupancy; (*b*) the question of the right of civilised races to take possession of territories occupied by uncivilised tribes; (*c*) the question of the right to appropriate a portion of the open sea.

(*a*) The State, by universal admission, can lay hold of and set up property in territory not owned by another State. The conditions of valid occupancy in this case have already been enumerated.* For instance, the act must be such as is fitted to convey to others the intention of the occupying State. It is generally expressed by the two acts of *annexation* and *settlement*, i.e. the planting of a flag in sign of ownership, and the actual and permanent settlement of officials in the newly acquired territory in sign of actual use. Again, a State can occupy by natural law only so much territory as it is really able and is now prepared to control. For this reason we saw that according to the positive international law † the occupation of a certain stretch of coast bestows ownership over such territory as is drained by the rivers emptying themselves into the sea along this stretch of coast, such being the extent of territory which is supposed to fall under the effective control of a power in possession of the coast.

It is important to remember that for occupancy on the part of the State mere discovery is not sufficient in natural law. The mere fact that an individual discovers a stretch of unoccupied territory does indeed confer upon that individual a right of private individual ownership over portion of that territory, provided the other necessary conditions of occupancy are fulfilled. But it confers no right of State ownership. A State assumes no responsibility for territory discovered by one of its subjects, and can claim no ownership or juris-

* p. 139.

† which here is nothing more than a concrete application of a purely natural principle.

diction in respect of it, unless by an express act it proclaims its intention to possess and control. Even, therefore, when territory has been discovered by the subjects of a particular State, and before that State has assumed possession by a formal act of occupancy, it is open to any other State to take public possession of it, full recognition of course being given to the private rights accruing to the discoverer from his act of successful private occupancy.

(*b*) We are led naturally at this point to consider the important question of the right of civilised communities to occupy the territory inhabited by uncivilised races. Here we have to distinguish three cases. (1) A stretch of country that is merely over-run by some nomadic horde may properly be treated as a *res nullius* and taken into ownership by any State. (2) An uncivilised people in occupation of a fixed territory may be either so small or so devoid of organisation as to fall completely outside of the category of the State, for which, as we have already seen, a certain degree of organisation, economic and juridical, is necessary. In that case any civilised community may by an act of occupancy take possession of the territory in question—and for the reason already given. In every territory two ownerships are recognised, individual private ownership, which is proprietory ownership proper, and the ownership of public control or public jurisdiction exercised by the State. Territory which is occupied by an uncivilised community of the kind described, though privately owned by that community or the individuals composing it, is not under the jurisdiction of any State, and it is, therefore, open to occupancy in so far as public jurisdiction is concerned. But on no account should the existing *private* rights of individuals be interfered with in the case, it being undeniable that the members of the smallest and least developed savage communities hold their property on titles quite as sound and compelling as those of civilised men. (3) Where, however, a community, accounted uncivilised, possesses the numbers and the degree of organisation required for a State in its technical sense, where, for instance, a community, *although not received into the comity of nations nor recognised as a Power by other States,* is yet so organised politically, *i.e.* is so provided with the necessary public organs that other States could enter into public relations with it, if they chose to do so, then occupancy becomes unlawful, and invasion, unless justified on other titles would be wholly at variance with natural justice,

(*c*) Next comes the question whether and to what extent the *sea* can be appropriated. Whilst not insisting that partitionment and appropriation of the ocean is wholly opposed to natural law, our position in relation to this question is that such partitionment and appropriation cannot be said to be favoured by natural law and that there are the strongest natural reasons why private appropriation of the seas should be forbidden by *positive* international agreement.

Our contention here relates to the open sea and ocean only. That enclosed waters, like lakes and rivers, and also the marginal seas, easily and profitably lend themselves to appropriation, will readily be conceded by all. Their close relation to the land brings them wholly within the control of man : and capacity to use and control is, as we saw, a prime necessity of ownership ; also the uses and need of ownership over those waters will be apparent to all. But from innumerable points of view appropriation in the case of the open ocean is found to be objectionable. *In the first place,* it would be exceedingly difficult to determine property in the case of the open ocean. The waters themselves are fluid, not fixed, and, therefore, the various territorial confines could only be marked out by imaginary lines lying between fixed landmarks : on the other hand, the landmarks determining these lines might often be exceedingly distant from one another so as to render the marking off by their means of different zones of ownership an almost impossible task. *Again,* to keep seas of the kind in permanent control would be well-nigh impossible, and would certainly require more warships than it would be worth even the most powerful nation's while to devote to such an apparently barren purpose. *Thirdly,* the reasons for ownership which obtain in the case of the land do not hold good for the high seas. The land is brought under the control of particular governments for two principal reasons ; first, because it is the *habitat* of the race, and, secondly, because it is rendered productive by human labour, and allows of the harvest being reaped in every case by the same hand by which it is sown. But the high seas are in the first place essentially pilgrim places, on which people are not meant to rest ; and, secondly, in so far as they are productive, they are in little or no need of human labour, whilst, even if labour is spent upon them, the harvest will generally be found, not in the place where the labour has been expended, but in other and probably far-distant regions. *Fourthly,* the open unappropriated ocean is necessary as the great highway of commerce between one nation and another. The nations

of the world are not to be regarded as isolated units. Between them they make up one vast commercial society, each being dependent on all the rest, and the open ocean both symbolises this unity, and is the chief promotive condition of intercourse between the parts of the social whole.

Though, therefore, the law of the open sea is not to be described as an absolutely indispensable part of the law of nature, still it is a law which is highly commended by nature as most in accordance with the natural requirements. It certainly ought not to be spoken of as a purely arbitrary principle * and it has been fully received into international law.

(3) *The right of free action.*

The third right in justice we have to consider is the right of the State to free action and development. It has a right to vary its own constitution, no matter how inconvenient such variation may prove to other nations, to enter fully into commercial relations with others, to trade with and refuse to trade with whom it likes, to give preferences to some nations over others, imposing what tariffs it likes in any case. In general, any act which is one of pure benevolence cannot be imposed by one State on another as an obligation in justice, or insisted on as a right.

The State has also a right to make treaties with other States and to carry on what negotiations it pleases; and other States have no right to interfere in these negotiations or to attempt to direct or end them, unless some right in justice on the part of the intervening State comes into question. States, too, have no right to prevent expansion or development on the part of another State on the mere plea that, in expanding, such other State threatens to become a serious rival in commerce, in military efficiency, or in world-power generally. Just as no individual has a right to interfere with another because that other threatens to become a serious competitor with him in the race for some of the goods of

* It has so been described by Hall, *op. cit.* p. 298

life, so also every State has a right to the full and free development of its own powers, provided that no actual or virtual aggression is committed against other States.

B. INTERNATIONAL BENEVOLENCE OR CHARITY

Having considered the leading natural justice-relations obtaining between States, we now proceed to consider certain international rights and duties of *charity*. Some writers, who are fully prepared to admit relations of justice between one State and another, are reluctant to admit obligations in charity, this virtue, they contend, being wholly foreign to the character and aim of States, their character being that of sovereign and independent societies not needing charity, and their aim being that of warding off aggression and extending their own influence in the world. But States do not cease to be human merely because of their character as fully equipped sovereign societies. On the contrary, it is because States are perfect societies, self-sufficient and *sui juris*, that they assume so much of the character and nature of individual persons who also are independent and *sui juris*, and on account of this likeness the laws obtaining between States are largely identical with those that determine the right relations of individuals. Just, therefore, as individuals are bound to one another by laws of charity, *i.e.* of benevolence, because of their likeness to one another in their common human nature, * so also States are bound by duties of charity because they are all members of the family of human kind. There will, of course, be differences in the requirements of the law of charity in the two cases. A State, for instance, could not lawfully surrender its independence for the sake of another State as one individual may lay down his life for another, the first duty of a State being

* See Vol. I. p. 320.

the duty of promoting the good of its own people. But, for the most part, the rules of charity obtaining between States are identical with those obtaining between individuals. Just, for instance, as individuals may aid, and, if they can do so without grave inconvenience,* ought to aid one another when in distress, so one State may, and where no grave inconvenience is feared, ought to come to the aid of another State in its hour of need. There is not a single reason obtaining for the existence of rights and duties of this kind between one individual and another that does not hold also as between States. Both are human, both are persons *sui juris* and independent, in both sets of cases each unit is allied to every other in the possession of the same human nature, and, as we saw in an earlier chapter of this work, it is this common possession which forms the essential condition and ground of charity or of benevolence.

The principle of non-intervention.

The view expressed above brings us into direct opposition to the well-known theory of non-intervention in international affairs, the theory, namely, that every State has a right to follow what course it likes with its own subjects without interference from other States, and also that third parties have no right, except when their own interests are affected, to interfere in or attempt to regulate or control the actions of one State in regard to another State, no matter what may be the rights and wrongs of these actions and relations.† Now, this theory is utterly opposed to practice and to reason. It is opposed to practice since, as Taylor writes, the right of intervention "has been enforced during a long period of

* Justice obliges even in the presence of grave inconvenience; charity, speaking generally, does not bind where grave inconvenience is involved.

† A much broader definition of intervention is given by some writers, *e.g.* by Taylor. Intervention is by these defined as interference with another State for any purpose, even that of *self*-defence.

time in a series of cases, some of which are now generally accepted as authoritative precedents " ; and it is opposed to reason because, as we have already observed, the same reasons that hold for benevolence and charity amongst individuals hold also for the case of States. Just, therefore, as one individual has a right to intervene to protect another from unjust attack, so also one State has a right to intervene in defence of another weaker State which is being unjustly used by a more powerful State, and also even in defence of the subjects of a particular State when their own government is subjecting them to an intolerable tyranny. It can also act in defence of another government which asks for aid against anarchy and wanton revolution on the part of its own subjects. And the ground of this right of intervention must not be mistaken. By Taylor the right to protect a State unjustly molested by another is regarded as conferred in some implicit way by the whole body of States as possessing some kind of authority over each, and in particular as possessing the right to punish acts that are contrary to international law, whilst the right to help in putting down tyrannies and revolutions is, he informs us, given in the right of the whole body of nations to prevent scandal in their midst. Now, that the comity of nations is possessed of authority of any kind over each sovereign State and is empowered to " punish " violations of international law on the part of any one nation, in the sense that a superior punishes an inferior, is a wholly unwarrantable assumption, grounded on no principle or fact of political science, whilst the " scandal " theory of intervention is simply an amusing fiction. The right and duty of intervention are a part of the law of charity and benevolence, which, equally well with justice, is to be regarded as grounded in and guaranteed by our human nature. It is, therefore, a right conferred by our human nature, and by the Author of nature, and not by enactments, express or implied, on the part of other States.

On Treaties

Treaties are public compacts entered into by one State with another or with a number of States. They differ, first, from the private contracts which one government makes with another, for instance, a contract for the purchase of war materials, for which reason we say that treaties are public contracts; secondly, from contracts made by the State with private individuals; thirdly, from concordats, which are solemn binding engagements entered into between the State and the Church.*

Treaties are effected by the heads of States, or by some part of the supreme governing authority specially designated in the constitution as empowered to effect treaties. In America, for instance, all treaties require the consent of the Senate or Upper House. Sometimes the provisional concluding of a treaty is entrusted to diplomats or plenipotentiaries delegated by the sovereign authority. But a treaty to be binding must be *ratified* by the sovereign authorities or, as we have said, by that body to whom the constitution and sovereign body entrusts this function.

The *conditions* required for a valid treaty are for the most part identical with those which determine the validity of ordinary contracts. Treaties, for instance, that offend against the natural law, and in particular the natural international law, are quite invalid. Thus

* As head of the papal dominions, the Pope could make treaties with other governments; as head of the Church he enters into concordats with them. Writers on one side and the other have attempted to maintain that concordats are not binding contracts. Some jurists would exempt the *prince* from all obligation, some canonists the *Pope*. Both opinions are absurd. What is the meaning of such agreements if they are not binding on the two parties? Some writers, again, maintain that concordats, though strictly binding on both parties, are not binding in justice because of the inequality of the two parties. Such technicalities it would be useless to attempt to examine here. Concordats are certainly binding in conscience on both sides, and they certainly are of their nature contractual acts. They have the same binding force, therefore, as treaties, though they are distinct from treaties.

a treaty having for its object the unjust subjugation of a particular nation would not be valid.

Two special questions arise in regard to the binding character of treaties. (1) do they bind when made under duress? (2) when do they cease to bind?

(1) We must here distinguish between two cases. First, a treaty made under duress, say, made under threat of war or forced on a defeated belligerent, can hardly be regarded as binding, or at least should be regarded as rescindible,* if the conditions imposed are manifestly and flagrantly unjust, for instance, if they are such as to reduce a State to the condition of absolute and irretrievable penury,† and the duress is extreme. Injustices of this kind receive no character of sacredness from the fact that they are perpetrated by way of treaty, and, therefore, they can hardly be regarded as binding the affected nation in commutative justice. It is true, as Grotius‡ (who defends the opposite opinion) maintains, that the doctrine that declares such treaties invalid is not without its dangers for the peace of the world, since it might be too largely availed of by rulers, more bent upon the pursuit of their own interests than the interests of justice. But, as one eminent writer§ remarks, there is an opposed danger also to be considered, the danger, viz. that if such treaties were generally held to be valid the stronger States might lend themselves too easily to the practice of dealing unjustly with the weaker and forcing unjust treaties on their acceptance. Apart, however, altogether from the question of possible misuse on either side, we have, as we have shown, the strongest reason for believing on intrinsic grounds in the invalidity of unjust treaties made under duress; but we repeat that, before this

* For rescission of treaties see p. 660.

† On this see Schiffini, "Philosophia Moralis," p. 606. Other writers, like Hall and Lawrence, adhere to the view quoted from Grotius above.

‡ De Jure Belli et Pacis, lib 3, c 19, n. 11.

§ Schiffini, "Philosophia Moralis."

doctrine could be applied in a particular case, the conditions which we have mentioned must be most rigorously fulfilled, viz. the duress should be extreme, the injustice most grave and manifest, and, we may add, rescission should only be attempted or invalidity assumed where no other way is open to the party to escape the injustice forced upon him.

Apart, however, from this very special case of unjust treaties, other treaties imposed on a nation under duress, say imposed on a defeated belligerent, or imposed under threat of war, are to be regarded as valid and binding in every case, provided that the parties who conclude the treaty are personally free. A monarch or plenipotentiary threatened with torture or acting out of fear for his personal safety, is not free personally, and treaties forced on him under these circumstances would not be valid. But if the framers of the treaty are personally free the treaty is valid and binding in international law. In this the case of treaties differs from that of the ordinary contract. For two reasons an ordinary contract, if made under duress, is without binding power; first, because one of the parties to the contract is personally unfree; secondly, because it would not be for the general good if such contracts were held to be binding, they would be wrung out of defenceless people on all occasions. Neither of these reasons holds good in the case of treaties, the first because the case has just been specially excluded by us; the second, because, if treaties made on occasion of war were not binding, practically no treaties would be binding, and, besides, wars would be unending and the peaceful settlement of public questions would become impossible.

(2) Treaties become *extinct*, first, when their objects are satisfied; secondly, when they become void—and they become void in several ways, *e.g.* by mutual consent of the parties, by extinction of one of the parties as a State, by execution having become impossible, by the "express condition on which the continuance

of the obligation of the treaty is made to depend" ceasing to exist, or, finally, by a treaty becoming incompatible with universally admitted international law. A more difficult question arises in regard to the *voidability* of treaties, *i.e.* the case in which treaties, valid at the time of conclusion, and continuing to be valid until repudiated by one of the parties, may lawfully be so repudiated. The case, of course, is not considered in positive international law; by one writer * it is even said to be a case that transcends law; and certainly it is very difficult to lay down any kind of general rules that will be of use to one in particular cases. But all admit that there are cases where treaties may be regarded as voidable,† and so some general rules, however abstract, must be available for determining when a party may declare a treaty void, *i.e.* may declare itself "freed from the obligation under which it has placed itself." (*a*) This right, it is generally admitted, is acquired when an implied condition of its obligatory force at the time of the making of the treaty ceases to hold good. For instance, where one party has failed to fulfil his obligation *in regard at least to the main object* of the treaty, the other may rightly regard itself as justified in repudiating the treaty even in its entirety. Again, a treaty becomes voidable "so soon as it is dangerous to the life or incompatible with the independence of a State ‡ provided that its injurious effects were not intended," or contemplated as possibilities, "by the contracting parties at the time of its conclusion." § If as a result, for instance, of an entirely

* Lawrence, *op. cit.* p. 328.

† Ordinary contracts when voidable are extinguished generally by the civil courts; but in the case of treaties, there being no common government with jurisdiction over the parties, it is left to the parties themselves in certain justifying circumstances to break away.

‡ As Taylor writes (*op. cit.* p. 40) "if a treaty is consistent at the outset with the right of self-preservation it is an implied condition that it shall remain so."

§ Hall, *op. cit.* p. 327. For a full treatment of this question see Hall, also Taylor, *op. cit* p 400.

new and wholly uncontemplated set of circumstances observance of a treaty would involve the extinction of a State or complete loss of independence, such treaty might justly be repudiated by the affected State. But in its very terms a treaty might be intended to concern the loss or extinction of itself, *i.e.* the merging of itself in another State, or it might by its very nature imply the possibility of the occurrence of circumstances involving its own destruction, and in that case the obligatory force of a treaty would still continue, even on the occurrence of those circumstances. For instance, a treaty made to avoid the use of poisonous gases in war, or to observe the neutrality of neutralised countries in time of war, must still be regarded as binding, no matter how great the advantage attaching to the violation of such treaties, or how complete the defeat threatened on either side. Treaties of the kind are made for the very circumstances here contemplated, they are brought into operation rather than extinguished by the occurrence of these circumstances, and, therefore, a State should suffer any loss rather than attempt to violate these treaties.

But apart from these cases, *i.e.* the case in which dismemberment is itself the object of the treaty, or the case in which circumstances that might possibly involve the greatest disasters to a nation, are themselves the circumstances for which the treaty purposes to provide, a treaty is to be regarded as voidable where observance of it would involve the destruction of a nation or complete loss of dependence. Treaties are made for a future that supposes the independence and sovereignty of each party to the treaty, and, therefore, they become voidable under circumstances involving discontinuance of these.

(*b*) Further than this it is not possible to go in regard to the question of the voidability of treaties. Such theories as that a treaty ceases to be obligatory when it

becomes unduly onerous to one of the parties,* or when it proves incompatible with the general good of a State, could not be too strongly disowned and repudiated. A nation might, indeed, be bound in charity and humanity to reconsider, and if possible to temper, conditions of agreements that have proved to be much more onerous to the other party to the contract than was at first expected. But in strict justice such agreements lose none of their obligatory force by the occurrence of these unforeseen effects. And the reasons are obvious. First, all contracts, whether of individuals or of States, involve, and are understood to involve, the risk of possible loss or disadvantage arising through variation in some one or other of the circumstances attending their fulfilment. Such risk is the price that all parties are prepared to pay for the security as well as the definiteness and the permanence of the obligation which the contract imposes. The man, for instance, who makes a contract to buy coal at a certain price for a long period may lose through the prices falling. But this risk is run for the security afforded him against the possibility of rising prices. And treaties are contracts and follow the ordinary rules of contracts. Again, if States might regard themselves as released from their public contracts through even grave losses attendant on their fulfilment, treaties would be repudiated every day, and would lose, as instruments for promoting the peace of nations, their whole effectiveness. And it is to be remembered in this connection, that, to treaties, as a means of reconciling international interests, there is no other alternative that can at present be looked on as practical politics but that of unending war, and the continued tyranny of the strong over the weak.

* For these opinions see Taylor, *op. cit.* p. 402, and Hall, *op. cit.* p. 328.

On War

Definition.

By war is meant a condition of armed active hostility between two or more sovereign States.

In the first place, war is a conflict between sovereign and independent States only. A State does not go to war with individuals, or with peoples as opposed to governments, or governments as opposed to peoples; it goes to war with a whole State, sovereign and independent like itself.* Secondly, war is conducted by force of arms. Mere commercial hostility and aggression would not constitute a war. War is a trial of armed strength between two States. Thirdly, mere preparation for future aggression is not a war. War is essentially a condition of actual hostility and conflict between rival States.

The kinds of war.

Wars are *just* or *unjust* according as the conditions necessary for justification, to be enumerated later, are present or not.

Wars are also divided into *defensive* and *offensive*. This distinction is of the utmost importance in relation to the discussions to follow. Some writers use these words to signify respectively—war on the side of the State against which war is first declared, or first entered upon, and war on the side of the State that first declares, or first proceeds to wage it. But it is evident that in a just war, and we are here supposing a war to be just, the declaring or opening of war always presupposes some previous hostile or unjust act on the part of the State against which war is undertaken, and, therefore, a war may be defensive even on the side of the State that declares war—it may be a defence against those acts

* Civil wars are public conflicts only; they are not wars in the proper sense of the term

of hostility and injustice that preceded and brought it about, and that still continue in their effects. It is better, therefore, to use the word *defensive* war to signify a war undertaken in defence of the people, property, or honour of the State. An *offensive* war will be a war that presupposes no injury, and, in particular, a war undertaken merely in order to injure or destroy a State, or for purposes of enrichment at the expense of another State.

Lawful war is always of the nature of defence.

Authorities are all agreed that a just war always presupposes some dishonour or injury inflicted by one of the belligerents; they are agreed also that war is undertaken on account of such dishonour or injury. In a broad sense of the word, therefore, it can be maintained that every war is of its nature vindicative, in the sense, viz. that it relates to a past offence or injury. But it is necessary to come to some more definite conclusion than this, on the relation obtaining between war and the offence or injury that brings it about.

Broadly speaking, there are only two views possible with regard to the relation obtaining between a lawful war and the injury that precedes and causes it. One is the view that war, if it *is* not always punitive, at all events *may* be *punitive* in character, that it may be undertaken to *punish* a delinquent State. The other view is that war is always of its nature *defensive*, that it is always undertaken in defence of the people, the territory, the property, or the honour of a State—that it is never undertaken *in poenam*.* It is highly important, particularly on account of the consequences,

* Sometimes we speak of a war of retaliation. But retaliation is either a *punitive* act or an act undertaken to recover the equivalent of what one has lost, in property or in honour In this latter sense retaliation is an act of *defence*—defence of one's property or one's honour. Our claim remains, therefore, that punishment and "defence" are the only two possible theories.

that we should come to a definite decision as to these two rival views of the nature and purpose of war.

Now that war is of its nature defensive and not punitive is evident; and it is proved by means of the following arguments:—

(1) War is a fight between equals, neither of whom has authority over the other, whereas punishment is inflicted by superior on inferior, by ruler on subject.

(2) When one man steals a hundred pounds from another, the second has a right to recover this hundred pounds. If he can do this without violence this is the sole extent of his right.* If not, he may use violence for the recovery of his property. So also it is agreed by all that if one State captures the territory of another, that other has a right to recover its territory; but if violence is not required for its recovery, as in the case in which the delinquent State offers no resistance to its recovery, then violence and war are not allowed.† On the other hand, if war is necessary for the recovery of the captured territory, it may lawfully be undertaken. It is agreed also that when a nation has been dishonoured it has a right to the recovery of its honour; that if an apology suffices for this end, this is the extent of the right of the injured State, that if this is not sufficient, and if war is the only means of recovering the national honour,‡ then war is lawful. From all this it is evident that war is not supposed to be undertaken *in poenam alterius*, but in defence only. Were war punitive in purpose it could be undertaken even when full compensation is offered by the delinquent State. War being lawful only for the sake of recovering what has been

* He can, of course, appeal to the ruler to punish the thief.

† We suppose that a second invasion is not threatened by the delinquent State.

‡ This end—the recovery of the national honour—will easily be understood by an example. If a man strikes me in the face and then proceeds to walk away with his hands in his pockets, I am dishonoured by his act. But if he walks away instead, having received a sound thrashing, my honour is restored.

lost, its purpose can be nothing else than that of defence.

(3) If war could be waged for purposes of punishment it would sometimes be lawful not only to wound enemy combatants, but also to put the wounded to death. But there is no nation so barbarous that it will not defend itself against the charge of killing wounded men. It is, therefore, the clear view of mankind expressed in acts of war that the only right which war bestows on a belligerent is the right to put an enemy out of action, to stop aggression; that its right, therefore, is to defend itself against attack. It is because war is essentially defensive that, as soon as the attack is over, and no question of defence can further arise, no further aggression can be undertaken.

(4) We cannot *punish* a man for an act, however injurious, which is done *in bona fide*; in other words we can only *punish* a man who is *formally* guilty of a criminal act. But one State can go to war with another if it is clear that its own rights have been violated, without thought of or care for the *bona fides* of that other. If wars were disallowed through the *bona fides* of the supposed offending party, few wars would be allowed in natural law.

In a lawful war killing is indirect.

War being of its nature an act of defence,* it follows that killing in war is indirect and not direct. It is never lawful to will directly a thing which is evil or unlawful or disallowed; but it is lawful *under certain conditions* † to do an act, good or lawful in itself, for the sake of the good consequences which it produces, even though it is known that the same act will be attended

* *i.e.* defence either of the belligerent State itself or of some other. Any nation when unjustly attacked may call on another State for aid. This other State then enjoys the same right of violence against the invader as is allowed to the injured State.

† See these conditions, vol. I. ch. ii.

by evil consequences also. In that case we are said to will these evil consequences indirectly only. An important application of this far-reaching principle was found in the problem of killing an unjust aggressor in self-defence. It is lawful to do such violence to an unjust aggressor as is necessary in self-defence. Now the one thing necessary in self-defence is to stop the aggression of the enemy, to render him incapable of further aggression,* and to take such means as are in strictness required for this. The means are—striking, wounding, rendering him incapable of movement; but killing *as such* is never necessary. And, therefore, whilst it is lawful to aim at wounding an unjust aggressor, at wounding him even severely, it is not lawful to *aim* at killing him. Of course, in the heat of the combat it is not possible to discriminate between the things which will wound only and the things which will kill, but even here the principle holds that it is not lawful to *aim* directly at the death of the aggressor. If, however, as a result of the quality and vigour of our defence, the aggressor should meet, not with injury only, but with death, his death is only indirectly attributable to us, and our act is still lawful and free from guilt.

It is the same in the case of war. A nation goes to war in self-defence.† For this, all that is necessary is to break down the resistance of the enemy, to put him out of action, and this, and what is necessary for this,

* *i.e.* on this occasion. You could not take means to render a man incapable of attacking you twenty years hence or even six months hence. One *defends* himself only against present aggression. See vol. II. p. 191. The reader should recall all that we have written on the problem of killing in self-defence.

† It must be remembered that the defence, spoken of here, is defence against the wrong originally inflicted. A nation whose territory is taken by another may go to war in defence of its right to that territory, and if it meets with opposition on the part of the delinquent State it may beat this opposition down by force of arms. This beating down of the enemy forces is still part of our defence, just as striking the thief who tries to hold on to stolen articles is part of the defence of our property.

a nation may aim directly at accomplishing. But death *as such* is not necessary for this,* and, therefore, a nation may not aim directly at the death of the enemy. If, however, as a result of our defence the enemy should not merely fall, but be slain also, his death is not to be attributed to us directly, and our act still falls within the category of a blameless defence.

Now, in actual battle it would be ridiculous to expect a soldier to make this distinction and to use the instruments of war in such a way as to wound only and not to kill. But such precautions are possible in *devising* and *supplying* the instruments of war. It is lawful to supply any instrument of war that can be used for bringing down an enemy, for wounding him, for knocking ing him out of battle, such as swords, ordinary rifle-bullets, shells. The natural law does not even prohibit the use of asphyxiating gases,† since this weapon of war, brutal as it is, is, nevertheless, compatible with wounding and not killing the enemy. But the natural law forbids the direct aiming at the death of the enemy, and, therefore, it prohibits such practices as the use of poisoned or explosive bullets, the *sole* and necessary

* This very important proposition we regard as self-evident. Once the power of movement is lost, the attack necessarily ceases. Death, as such, therefore, could not be necessary (on this see p. 99) Nor can it be claimed that death is necessary in self-defence, since a soldier that is merely wounded may recover and return to the field. For, first, defence proper always concerns present, not future, aggression. To ward off future aggression is a preventative act, not defensive. Secondly, whether a soldier that is merely wounded will return or not, and whether or not it would be lawful to take the means now to prevent his future return, it always remains true that death, as such, is not necessary for warding off even future attack. To wound with sufficient severity or to inflict a sufficient number of wounds is all that is required. Therefore, whilst the defence may be made as violent as possible, to *aim* at death is not allowed Thirdly, if killing is lawful in order to prevent recovery, then there is no reason why the wounded and all those who fall in battle should not be attacked anew and *slain*. But this the conscience of all nations regards with horror as opposed to all the laws of legitimate defence.

† Such practices are, however, rightly excluded by international law.

effect of which is to kill; * it forbids also the killing of soldiers fallen in battle, since the killing of the wounded can in no way be construed as an act of self-defence.

Combatants and non-combatants.

War being of the nature of self-defence and not of punishment, the distinction between innocent and guilty enemy-subjects does not arise. It would be wrong to punish a person who is not formally guilty of some crime; but I may kill a man who makes an unwarranted attack upon my life, whether the aggressor is innocent or guilty, whether, for instance, he is sane or insane, or whether he believes his act is justified or does not. But if the distinction of innocent and guilty does not arise in the present connection, the distinction of combatant and non-combatant not only arises but is of the very highest importance. War being an act of defence, it is lawful for a belligerent to beat down all opposition on the part of the enemy, and, therefore, it is lawful to beat down and scatter all enemy combatants. But war confers no right of violence as against non-combatants. To do violence to a non-combatant could never be construed into an act of self-defence.

The question, however, arises—who are those that fall under the category of combatants, to whom, therefore, violence may be done? The answer is—under the title of combatants are included in natural law all those who are engaged in *actual* aggression. This includes, first, all those who form part of the *actual* forces of a belligerent State; and, secondly, all others who are actually engaged in the promotion of the war. To all these violence may be done. A State at war cannot kill persons who are *potential* combatants merely.

* It is only by accident that an explosive or poisonous bullet does not kill, for instance, if the explosive bullet happens not to enter the body, or the poisonous bullet is at once extracted and the prescribed medical precautions are taken.

Every person in the State, even down to the baby in the cradle, is a potential combatant, and surely the child in the cradle cannot be killed as an aggressor. But it is lawful to kill all soldiers in uniform or soldiers called to arms; also all who perform auxiliary services,* such as workers on arms and munitions, persons connected with transport, *i.e.* with the supply of food and the implements of war, and persons working a field telegraph. All these are actual enemy aggressors. Mere sympathy would not bring a man under the category of an actual aggressor, and so it would not be lawful to slaughter the populace because of their known sympathy with the enemy. But the *immediate* supplying of the sinews of war to the enemy is more than sympathy, and effectively brings a person within the category of an enemy combatant.

Again, not only prisoners of war, but also all who offer themselves as prisoners, fall outside the category of enemy combatants and should be treated as such. Soldiers who genuinely offer themselves as prisoners † must be received as prisoners even if there is no food available for them. It is never allowed to treat a non-combatant as if he were still an aggressor. It would be wrong also to treat prisoners of war as hostages, *i.e.* to exact promises from the enemy under threat of killing the enemy prisoners. On the one hand, a State has no authority over the lives of prisoners taken in war except in regard to actions done after capture. On the other, to kill them is not an act of defence;

* It is persons performing auxiliary services that seem to be referred to in Art. 3 of the Hague Regulations under the title of non-combatant armed forces The title is not a good one. They are combatants, but not armed.

† Spies belong to a wholly different category. A spy entering enemy territory attempts to pass off as a subject. But by assuming the *privileges* of a subject he must assume the *onera* as well, and, therefore, can be treated as a subject and punished for his crime in any way pleasing to the authorities. Prisoners taken on the battlefield have not posed as subjects, and, therefore, cannot be treated as subjects, and cannot be punished except for crimes committed after they have been taken.

and, therefore, the State cannot lawfully put them to death.*

The same principles that govern the rights of a belligerent in regard to killing enemy persons in war, determine also their rights in regard to the destruction of enemy property. All property which is destined or ear-marked for purposes of war can be lawfully destroyed, even if it belongs to private persons.† If a war-loan could be destroyed its destruction would be perfectly lawful. But the persons supplying such loan could not be killed, because the killing of such persons would in no way promote one's purpose in war. Their death would still permit of their property being made available on the side of the enemy.

* But rebels may be held as hostages, since the State has full authority over them, and could punish them for their rebellion even by killing them.

† Other private property cannot. But this rule relates to the actual waging of war. The rights of a belligerent over property in a district which he has successfully "occupied," even though the war is not yet brought to a conclusion, *e.g.* the occupation of Belgium by the Germans in the great war begun in 1914, are different. In general, the successful invader might exercise ownership over public property, since, being in occupation, he stands in the place of the dispossessed Government. But private property he should respect.

The positive rules of international law, at least so far as land warfare is concerned, will, in the main, be found to bear out this view of the requirements of the natural law. Thus, of *public property*, movable goods (with certain exceptions excluded by treaty, *e.g.* works of art) may be appropriated by the *invader*; whilst over immovables (again with certain exceptions such as places of public worship, museums, etc. the seizure of which is forbidden) the invader is given usufructuary rights, *i.e.* he can gather the fruits but must not destroy the things. As regards *private property*, immovables, speaking generally, cannot be appropriated by the invader, and even the profits arising from them cannot be confiscated, whilst movables must not be seized unless they are calculated to help the enemy for some purpose of war. As regards requisitions and contributions, the general rule seems to be that only so much should be levied as is required to support the army of occupation and to pay for the administration of the place; but for such exactions either payment must be made or a receipt should be given entitling the private persons affected to future remuneration, either by their own or by the enemy State. Of course, fines may be levied on account of damage or resistance by the civil inhabitants. For detailed information see Lawrence, *op. cit.* pp. 436, 439; and Westlake, *op. cit.* II. ch. iv.

Air-raids and the sinking of merchant vessels.

Arising out of the distinction of combatants and non-combatants, is the question whether air-raids and the sinking of merchant and passenger vessels are lawful.

Air-raids upon fortifications, arsenals, military barracks, munition factories, and other belligerent institutions and places are lawful, provided every care is taken to spare the lives and property of non-combatants. But *indiscriminate* air-raids upon cities like London, Manchester, Cologne or Berlin are quite unlawful. For, first, such raids are obviously undertaken, not in order to kill enemy troops, but as a part of the general policy of "frightfulness," the policy, viz. of inspiring non-combatants with fear and so undermining the *morale* of the enemy State. Such raids, therefore, are undertaken directly with a view to the death and destruction of non-combatants, their death being desired as a means to the lowering of the public *morale*.* It is impossible to think that air-raids, which are always expensive and always dangerous to the raiders, would be undertaken for the mere off-chance of killing the few enemy soldiers that might happen to be abroad at the time of the raid. Secondly, lawful indirect killing always requires some proportion between the good expected from one's act and the deaths which occur. And, therefore, even if what is aimed at directly in these air-raids is the killing of a few soldiers, these *indiscriminate* air-raids are quite unlawful, for there is no justifying proportion between the chance killing of a few enemy soldiers on the one hand (a chance that can hardly ever be realised) and the certain death of many non-combatant citizens on the other.

* As was pointed out before, you aim *directly* at a particular object, whether that object is intended as an end in itself, or as a means to something else. The man who kills another in order to get that other's money, aims at his death quite as directly as if he killed for the sake of killing.

The sinking of food ships destined for the enemy is not disallowed in natural law, since it is the soldiers in the field that have the first call upon all incoming supplies, and it is lawful to deprive them of these supplies. To sink passenger vessels, or liners, carrying munitions of war or engaged in some other belligerent mission, is lawful, provided that all that is possible is done to save the lives of the passengers. To sink passenger vessels not engaged on any mission of war is wholly disallowed; and, if loss of life occurs, the act is to be regarded as one of sheer and unadulterated murder.*

Reprisals.

We may define reprisals† as any act of retaliation upon an enemy in which an equivalent evil is inflicted for damage sustained, for instance, an air-raid by the British on Cologne to balance the German air-raids on

* In the great European war begun in 1914 it was sometimes asserted that the Germans had as good a right to raid London as the English had to starve Germany by means of the British fleet. In both cases non-combatants were the principal sufferers. But the difference between the two cases is enormous. In certain air-raids what is directly aimed at is the destruction of non-combatants. In the blockade of Germany at least it is understood that what was directly aimed at was the starvation of the German troops, who would have the first call upon all food coming into the country. Enemy troops may be deprived of food in either of two ways, first by letting no food into the country, second by preventing the escape of the civil population (as in the case of towns besieged) so that the civil population may eat up the existing supplies. In either case the object directly aimed at is the starvation of the enemy troops, not any harm to the civil population.

Whilst, however, the analogy between air-raids and blockade fails to hold good, an instructive comparison of another kind suggests itself in connection with our present discussion. If one country may lawfully blockade another, in order to prevent the supply of food, the same is lawful on the other side. But, whatever the method of blockade adopted, the rights of *sailors* and other civil persons to their lives should be respected.

† We use the word here in its popular meaning. In international law the word "reprisals" is sometimes used to signify any sort of pressure, short of war, exercised by one nation on another, *e.g.* embargo or blockade.

London and Scarborough. Are these acts of retaliation lawful? Our answer is that reprisals are lawful where the evil that is perpetrated on either side is evil by reason of treaty only and not by reason of natural law. If one party to a treaty ceases to abide by its terms it is no longer to be regarded as binding on the other party. Thus, the use of poisonous gases by one belligerent justifies their use by another opposed belligerent, these things being excluded by treaty only. But where the evil that is perpetrated by one of the belligerents is evil by reason of natural law, reprisals are wholly unlawful. What is evil by natural law remains evil, even though the natural law should be ignored, and the forbidden practices indulged, by one of the parties. It is forbidden, for instance, by natural law to kill non-combatants, and so, just as A could not kill B's child because B had killed A's child, so also it would be quite unlawful for England in the great war to make air-raids upon German cities because her own cities had been raided by Germany. Any satisfaction which is sought should be sought either at the expense of the enemy forces, they being the responsible parties, or by way of indemnity from the whole nation after the war.

The conditions of a just war.

War is not to be regarded as intrinsically good or as something which is naturally necessary for human development. We cannot see any reason, but we see great unreason, as well as infinite danger, in the doctrine expressed by Treitschke * that war is not to be regarded as a mere remedy against possible evil, or as tolerable only in rare and abnormal contingencies, but

* In his work, "Die Politik." Treitschke was born at Dresden in 1834. He became professor of History in the University of Berlin, where he delivered his famous lectures on Politics. An excellent account of his whole teaching is given in "The Political Thought of Heinrich von Treitschke," by H. W C Davis, M.A.

that it is as necessary as the State itself, that without war "there would be no States," that "it is only in war that a people becomes in very deed a people," that "to expel war from the universe would be to mutilate human nature." As well might one say that disunion and violence are necessary amongst the citizens of the State, that to repress them is to mutilate human nature, and that it is the business of the government to foment disorder in a society threatened with too much peace. "Peace," writes Lawrence,* "does not necessarily mean sloth and slavery. Men can be manly without periodical resort to the occupation of mutual slaughter. It is not necessary to graduate in the school of arms in order to learn the hard lessons of duty and honour and self-sacrifice. . . . Ignoble ease has sometimes sapped the virility of nations. But has not war again and again turned the victors into human swine and the vanquished into hunted wild beasts?"

So far from being a perfection, war is full of evil. If it could be avoided, the world, without war, would be a better world. It is tolerable only for the reasons for which surgical operations and hanging are tolerable, *i.e.* as a means for the cure and prevention of intolerable ills.

But if war is not a good in itself, neither is it to be regarded as intrinsically evil. Like the surgical operation, and killing in self-defence, war, though accompanied by, and the cause of much evil, is necessary, and in certain circumstances is even morally good. It is evil for an individual to kill an innocent man, but it is not evil to kill in self-defence. So the wanton slaughter of one nation by another is evil, but war undertaken in self-defence, or in support of another nation which is being unjustly used, is allowable and often even necessary in natural law.

To be just, however, a war must fulfil certain conditions. These conditions are: (1) war must be initiated

* *op. cit* p 573

by public authority; (2) it must be necessary; (3) there must be a legitimate and sufficient cause; (4) a right intention must be entertained.

(1) Only the sovereign power or the person, or body designated by the sovereign power in the constitution, can lawfully declare war. War is an act of the nation as such, and it may be declared only by the sovereign power which represents the nation, or by some person or body designated by the sovereign power through the constitution. In England, the monarch declares war through his government. In France, the President declares war with the consent of the two chambers. In the United States, war is declared by Congress.

(2) War must be necessary for the vindication of some right which is violated. If an apology suffices and is tendered, war should not be waged. If full reparation is offered it should not be refused. For this reason also, although an *ultimatum* is not delivered in every case, it should be sent where possible. A ruthless and desolating war might often be averted by the formal presenting of an *ultimatum*.*

(3) There must be a just and sufficient cause, such as loss of territory, of honour, of property, or some other grave injustice to the nation.

The just causes of war are many and could not possibly be enumerated here. But it may be useful to refer to certain causes which are *not* legitimate, *i.e.* which are not sufficient to justify recourse to war. War may not be lawfully waged for the sake of territorial aggrandisement or for mere glory. Neither can it be waged through jealousy or apprehension of a growing rival, or to maintain the "balance of power" as it is called. A State that attempted to expand at the expense of other States, or that made manifest its intention, whether formally or in any equivalent way, of using its growing strength for the purpose of unjust aggression against other States, might legitimately be

* See Westlake, "International Law," II. 14.

impeded from reaching a degree of expansion dangerous to the other powers in question. But in the absence of such certain and manifest intention on the part of a rival State, to go to war merely for the sake of preserving the balance of power would be a gross injustice, a serious and wanton interference with the inherent right of every State to utilise its capacity for expansion within just and legal limits. Finally, war may not be waged in defence of what is not strictly a right in justice. It could not be waged on account of want of friendship * or benevolence on the part of another nation; but if by force or fraud the friendship of any two nations is broken down by a third, or if by force or fraud one of the two States is prevented from doing to another those acts of friendship which it earnestly desires to perform, such interference is said to entitle the injured State to seek redress and vindicate its honour even by force of arms.

(4) A right intention is necessary. It would not be allowable, whilst outwardly and seemingly waging war in order to vindicate even a right which has in truth been violated, inwardly and really to wage it for some other illegitimate purpose, for instance, to get rid of a great military or naval rival. A bad intention can vitiate an act, otherwise legitimate, in war as in every other department of human conduct.

The close of war.

A principle of great importance in connection with the ethics of war is the principle that victory confers on the victor no special rights over his opponents.† The rights enjoyed by the victor at the close of a war

* When war is said to be caused by an "unfriendly act," what is generally referred to is, not mere unfriendliness, but some small violation of justice.

† See p. 521, where it is shown that though victory and conquest confer no authority upon the victor, yet after conquest political authority may pass to the victor on another title.

are those rights which were present from the beginning of the war—they are not added to by his victory.

If, therefore, a war is unjust, the victor acquires no rights whatsoever over the conquered people and territory. On the contrary, he should make restitution for all the loss he has inflicted on his enemy. Again, even in a just war, victory confers no right of depriving the conquered people of their sovereignty and freedom. That right may belong to the victor on other grounds; it does not arise on the ground of victory alone. In other words, the rights and wrongs of war are determined by those abiding moral principles which govern the relations of States, and they remain the same, no matter which of the combatants is victorious or is subdued.

In a *just* war the side to which victory falls enjoys three rights only, first, the right to recover property or honour according to the injustice which has been done; secondly, the right to exact compensation for losses contracted in the war; thirdly, the right to put down an attitude of *permanent* hostility on the part of the defeated State, else a recurrence of the war is only a matter of time and opportunity. If subjugation is required for this end, subjugation is lawful. But war is of its nature defensive, and, therefore, subjugation would not be lawful for the mere purpose of preventing future *possible* aggression which is not now in any way threatened.* Ordinary and remote possibilities of future war can never be dissociated from the contending interests of powerful rival States, and they cannot be regarded as a legitimate cause of war.

Whether wars will ever be wholly eliminated as development proceeds, and society becomes more and more consolidated and unified, it would be impossible to say; whether peaceful arbitration, or some other method more suitable than war for determining the

* It is threatened, even now, if the *permanent* attitude of the defeated State is one of aggression.

issues of public justice, will ever become the universally accepted substitute for war, it would be idle to discuss. But, certainly, to that end the world in time of peace should direct its best and most untiring efforts. But if with time it becomes evident that the chancelleries of the world are unable to devise, or through their mutual jealousies are prevented from agreeing upon, some more human method for the settling of international disputes than that method of which the brute animals are the finished exponents, the method, namely, of tooth and claw, of blood and slaughter, of endless pain and misery, then it is for the peoples themselves, on whom the burden and horrors of war fall most heavily and assuredly, to approach the problem, to devise a better method, and by every constitutional means at their disposal to see that it is accepted by the governments of the world.

APPENDICES

The Financial Impossibility of Socialism

On p. 260 we developed an argument showing that socialism is financially impossible, unless the method resorted to is that of complete confiscation and robbery, and such a method, we presumed, would not be approved by the conscience of socialists any more than that of other persons. Every man has a right to compensation for property justly acquired, and this right holds not only as against other individuals but also as against the State.

We wish in the present appendix to point out that this argument holds good, whether the method proposed for nationalising all capital is that of depriving owners of their property during their lives, or depriving their heirs of it at the death of the original owners. When a workman out of his hard earnings saves a hundred pounds, not only has he a natural right to use that hundred pounds during his life but he has a *natural** right also to bequeath it to his children. The children are then the true owners, and the State has no more right to deprive them of their property than to confiscate it during the life of the parent. Of course, the State has a full right to exact something by way of death-duty when property is bequeathed. The State must be supported, and it is for the State to determine the manner in which its support is to be secured. But the State has no right to more than is required for its support and its work. It has no right to more than a contribution out of the possessions of its subjects. The essential rights of property it must leave intact. The system of gradual confiscation therefore must be condemned.

Economically, also, the system which we are here considering is bound to prove most deleterious to the community.

* Socialists are wont to deny this. They say that the right of bequest is from the State alone. But this theory is absolutely groundless. The right of bequest is contained in the very conception of ownership which is nothing more than the right of the full disposal of one's property. Since, therefore, ownership is natural, the right of bequest is also natural. The socialist position on this whole question of bequest is fully given in Rignano's work "Un Socialisme en harmonie avec la Doctrine Économique Libérale."

What workman, for instance, would dream of saving a hundred pounds if he knew that the State would confiscate it at his death, or, if it were saved, would fail to squander it before it could pass into the possession of the State? And what is true of the poor is true of the rich also; there is no property so great that it could not be squandered in a decade of years.

Socialism, therefore, under any form, acts as a preventive to the accumulation of capital, and we know that, without increase of capital, industry not only cannot advance but must of necessity decline.

Argument Drawn from Laws of Patents and Copyright in Favour of the Gradual Socialisation of Capital

An argument in favour of gradual socialisation as above described is sometimes drawn from the brief proprietorship allowed by the State in the case of inventions. Inventions, it is said, are produced by and are the creation of the inventor—more truly so than any business enterprise. Yet the government will protect an invention for only a few years; after that it becomes public property. Why, therefore, should not factories or any other kind of productive capital become public property after they have been privately owned for a couple of generations?

The same argument, has been extended to the case of copyright in regard to books. They are the creation of the writer, yet copyright does not outlast a certain number of years. In time even the most valuable of writings become the property of the community.

Reply.—This argument based upon the prevailing laws of patent and copyright, instead of militating against the doctrine of the permanent ownership of capital, serves only to elucidate and confirm it. As long as an inventor or writer keeps the result of his own research or thought locked up in his own brain, it is in the completest sense his property, and no man can take it from him. But the moment that an invention is embodied in a machine for *public* sale, or that a writer's thoughts are *published, by these very acts* both inventor and writer have surrendered their right of private ownership; they have handed over their conceptions to the public to be used as the public may wish. It would therefore be absurd to expect governments to recognise any natural duty of protecting a published work, either for ever or for

a time, when by the very act of publication (as the word itself sufficiently indicates) a writer has made over his thought to the public, *i.e.* has made of it public property. The same holds in the case of oral utterances. Once I have uttered my thought the public are as much owners of it as myself and can repeat it, not merely after a number of years but from the very moment of utterance. Only one thing in the case of a published work is always and naturally the property of the writer, *viz.* the original manuscript. It is his thought that is published or made public property, not the manuscript in which his thought is first enshrined. And therefore publication does not imply surrender of one's rights of ownership over the original manuscript.

Inventor and writer have no *natural* right to protection or monopoly once they have put invention or written work upon the public market. But for reasons of the public interest, for instance, in order to foster invention and to encourage literary work, governments do often guarantee for a term of years that protection to inventors and writers which is not theirs by any natural right ; but as soon as the period of patent and copyright is over, the conditions originally created by the act of publication reappear, and the public comes into its own again.

The difference obtaining between inventions and publications on the one hand and ordinary business enterprise on the other will now be apparent. The building of a factory does not involve, as does the publication of a work or putting an invention on the market, the handing of the same over to the public. On the contrary when a factory is built it remains the property of the capitalist ; it is his for ever and the public have no rights in regard to it. Of course the public can imitate a factory and its methods or they can proceed if they like to imitate its products, *i.e.* they have a right to the plan and thought of a factory once it is erected, unless, indeed, government in the public interest undertakes to protect the capitalist, and gives him a monopoly of production for a period of years. To that extent factories stand on the very same footing as publications and inventions. But there is a further likeness also to be considered, *viz.*, that just as the public have no right to the original machine made by the inventor or to the manuscript of the writer, so they can assert no right of ownership over the factory erected by the capitalist at his own expense and by his own labour or by labour duly paid for ; such a right is never acquired by natural law even after a long period of years.

Revelation and Natural Religion

Of the relation in which natural religion stands to revealed, a fuller statement may be attempted here than was possible in our chapter on natural religion.

Whether any revelation was made in the beginning, and what the truths that were revealed, are questions that belong to doctrinal Theology rather than to Ethics, which is the science of natural morals only, as inculcated by reason. But our natural reason suggests to us the two following considerations which the reader should bear in mind when determining the relation of natural to revealed religion.

I. That natural religion preceded revealed religion *in point of time* could not be guaranteed, since even natural reason must recognise that a revelation might be made at the earliest moment in the history of mankind, whereas natural religion would require some time for its development. The question of fact—whether God did reveal Himself to man in the beginning of things is, as we said, a question for Theology not for Ethics.

But, *logically*, natural religion is certainly prior to revealed, in the sense that natural religion was a necessary implication of reason from the beginning, whereas revealed religion was not. Moreover, human reason, if left to itself, would certainly establish a religion, since it should necessarily become aware of God's existence and of man's dependence on God. Such religion would, of course, become in time subject to many misconceptions, but its inner ground and substance would still be true and have its own value in spite of these misconceptions.

II. Whether the religions of the existing savage races are due to revelation, or are a product of natural reason only, has been widely discussed both by those who admit that an early revelation was made to man and by those who do not. Granted that a revelation was made in the beginning, still, the present religions of savages might well be based on reason alone, through the original revelation having been forgotten, a supposition that is not to be dismissed as impossible in the case of peoples that have been cut off, through most of their history, from contact with the rest of the human race. We believe, however, that the results of modern investigation into the religion of savages can hardly be said to favour this view that their religion is a product of reason only, independently of revelation. Although it is certain that natural reason, without

the aid of revelation, should of necessity attain to some knowledge of God, and of man's duties towards Him, still, knowing what we do of the vacillations of reason, the blinding effect of passion, the paralysis of mind produced by poverty and long-continued isolation from the rest of mankind, we think it is hardly possible that the savage races could have developed their present religious beliefs without revelation of some kind. The beliefs of some savage races, particularly those of more primitive type, represent the highest and purest form of monotheism, and these beliefs, coupled with the kind of sacrifice customary amongst them, that, viz. of the first fruits, and their lofty marriage system which is that of the strictest monogyny (p. 45), afford, to our minds, very strong evidence that at least what is fundamental in present-day savage religion is to be traced in the first instance to an ancient revelation, and not to human reason alone, acting independently of revelation.

See series of articles in "Anthropos," vols. III., IV., V. (1908–1910), by P. G. Schmidt; or his work, "L'Origine de L' Idée de Dieu" (p. 108).

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LIST OF AUTHORS REFERRED TO IN THIS WORK